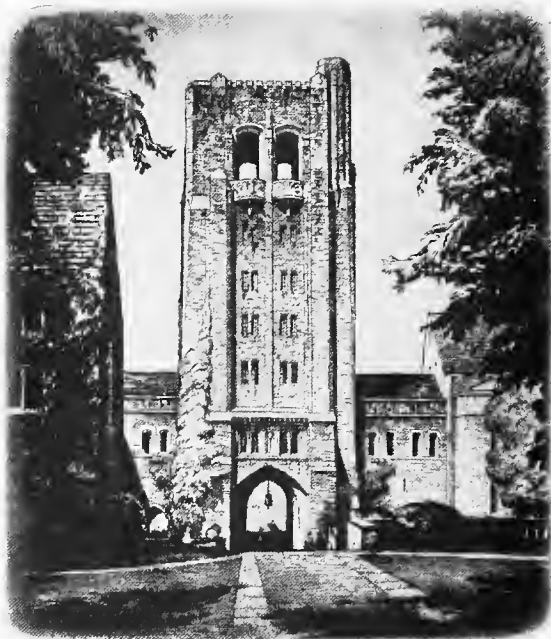




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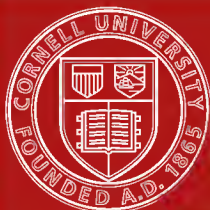
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## NOTICE.

SINCE the publication of this book the Registries of the Courts of Probate, Divorce, Appeals and Admiralty have been removed from Doctors' Commons to Somerset House, Strand. The Vicar-General's Office has been removed to Dean's Court, Doctors' Commons, and the Queen's Proctor's Office is now at the Treasury, Whitehall.

The method of proceeding in Testamentary Causes (stated in Chap. VI.), has been altered by the Judicature Acts. Proceedings by Petition have also been discontinued. Other Testamentary proceedings remain as stated herein.



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“A useful practical Work on all questions connected with Probate Court Business.”—*Law Magazine*.

“A thoroughly practical book on the business of the Probate Court.”—*Law Times*.

“To Solicitors having to transact Probate Business, or conduct suits in the Probate or Divorce Court, it is extremely serviceable.”—*Solicitors' Journal*.

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DOCTORS' COMMONS :  
ITS COURTS AND REGISTRIES,  
WITH  
A TREATISE  
ON  
PROBATE COURT BUSINESS,

BY  
G. J. FOSTER,

FORMERLY CLERK OF THE PAPERS OF THE PREROGATIVE  
COURT OF CANTERBURY,  
THEN OF HER MAJESTY'S COURT OF PROBATE,  
NOW RECORD KEEPER.

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THIRD EDITION.

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LONDON :  
PRINTED & PUBLISHED BY REEVES, SON & Co.,  
PLAYHOUSE YARD, BLACKFRIARS, E.C.  
SOLD BY  
SHAW & BLAKE, JOHNSON BROS., AND WM. KIRKMAN,  
GREAT KNIGHT RIDER STREET, DOCTORS' COMMONS,  
AND BY ALL BOOKSELLERS.

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PRICE 5s.

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1871.

*Entered at Stationers' Hall.*

LA 11242

# DEDICATION.

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TO  
AUGUSTUS FREDERIC BAYFORD, Esq., L.L.D.  
SENIOR REGISTRAR,  
OF  
HER MAJESTY'S COURTS OF PROBATE AND  
DIVORCE.  
CHANCELLOR OF THE DIOCESE OF  
MANCHESTER.

---

SIR,

It is with great pleasure that, by permission, I  
dedicate this work to you.

Your various associations with Doctors' Commons, your  
labours connected with the Reform in the Ecclesiastical  
Courts, and the position you at present occupy with  
respect to the Courts of Probate and Divorce, render this  
dedication peculiarly appropriate.

I remain, Sir,

Your obliged and obedient servant,

G. J. FOSTER.





DOCTORS' COMMONS,  
ITS COURTS AND REGISTRIES,  
WITH  
A TREATISE  
ON  
PROBATE COURT BUSINESS.

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# PREFACE

*TO THE THIRD EDITION.*

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Two large Editions of this work having become exhausted may justify the assertion that a Third Edition is required.

This success is not surprising, as the Author was practically acquainted with the requirement the Work was intended to supply. Indeed, in one of the Reviews it is said "We are not surprised at Mr. FOSTER's Book reaching a Second Edition, and he may be justified in expecting that time will add fresh honours to his Work."\*

When the Book was first issued the Writer expressed a hope that it would "not receive a harsh or unjust criticism." It has been received with uniform kindness. For this he tenders his sincere thanks to the Press, the Profession, and to those with whom he is publicly associated.

When the Author was Clerk of the Papers he had the satisfaction of seeing this Book constantly in use, and in order that it may be still further in the hands of those by whom the Business of which it treats is practically transacted, he has adopted a suggestion and caused this cheaper Edition to be issued.

\**Law Journal*, August, 1869.





# DOCTORS' COMMONS :

## ITS COURTS AND REGISTRIES,

WITH

## A TREATISE

ON

## PROBATE COURT BUSINESS.

---

### PART I.

#### REFORM IN ECCLESIASTICAL COURTS: ESTABLISHMENT OF THE COURTS OF PROBATE AND DIVORCE.

---

PRIOR to the year 1858 there were 372 Ecclesiastical Courts having Testamentary Jurisdiction in England. Their several names and numbers are thus stated :\*

Provincial and Diocesan Courts ... ..	36
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The greater portion of the Wills and Records connected with these Courts were kept in secure and appropriate

\*Ecclesiastical Report, 1832.

Registries. Some were deposited in Cathedral Churches, Bishops' Palaces, Cloisters of Cathedrals, Registrars' and Deputy Registrars' houses, Colleges, Muniment rooms, Churches, Abbeys, Lords of the Manor's houses, Chapter houses, Stewards' offices, and private dwelling houses, Rectors' and Vicars' residences, Court houses, Mansion houses, Chapels and Rooms in Deaneries and over Gateways.

Two interesting Histories of this Ecclesiastical Jurisdiction by Proctors in Doctors' Commons exist.

One by H. C. Coote, Esq., being the introduction to his "Ecclesiastical Practice." (1) The other, "A Sketch of the Origin and Early Progress of the Ecclesiastical Jurisdiction," (2) by Edwin Edwards, Esquire.

It is beyond the purpose of this Book to treat either of the origin or progress of this Jurisdiction, but one or two quotations will place the origin of these Courts favorably before the reader. Mr. Coote says, there is little doubt that "the establishment of the Ecclesiastical Courts gave a higher tone and character to the general judicature of the Country," and Mr. Edwards observes, "there can be no doubt that the Clergy received the warmest encouragement from the people in the exercise of their authority over Wills."

Tracing then the existence of these Courts through some Centuries, their "abuses" appear to have been remedied and their Testamentary Jurisdiction made tolerable by occasional Acts of Parliament, and according to another modern writer they appear to have been "productive of a sufficient amount of good to outweigh their imperfections." (3).

For many years past, however, the necessity for reform in the Ecclesiastical Courts has been admitted. It was frequently alleged that "they were too numerous," and "in the judgment of their warmest partisans required extensive reform."

Accordingly, in the year 1830 a Commission issued from the Crown to inquire into the Practice and Jurisdiction of the Ecclesiastical Courts. The result of this was a Report in the year 1832, recommending the abolition of Diocesan and inferior Courts, and the establishment of one Court in each of the Provinces of Canterbury and York.

(1) Published 1847. (2) Published 1853. (3) Anonymous.

From this period many Legislative attempts were made to reform these Courts.

In 1835 a Bill was introduced into Parliament, having for its object to provide one Testamentary Court for each Province.

In the same year a Bill was introduced for the establishment of one Court only.

In 1836 a Bill was brought in to establish one Court for England and Wales, to be called "His Majesty's Court of Probate."

In the same year a Bill was brought in, the object of which was to alter the Local Jurisdiction of all Ecclesiastical Courts, giving to the Prerogative Court exclusive Jurisdiction in London and the Counties around it, and assigning a limited Jurisdiction to the other Courts.

In 1843 a Bill was presented to consolidate the Testamentary Jurisdiction of England in the Court of Arches.

In the same year a Bill was brought in to consolidate the Arches and Prerogative Courts.

In 1844 a Bill was brought in to establish Metropolitan and Diocesan Courts throughout the kingdom, and give contentious Jurisdiction to each.

In 1845 a Bill was brought in to establish one Court of Probate in London.

And thus, until 1857 the question of reforming the Ecclesiastical Courts was constantly under the consideration of the Legislature.

In that year Parliament passed "an Act to amend the Law relating to Probate and Letters of Administration in England," and "an Act to amend the Law relating to Divorce and Matrimonial Causes in England."

By virtue of an Order in Council these Acts came into operation on the 11th January, 1858.

By the first of these Acts, called "the Court of Probate Act, 1857," all Ecclesiastical Testamentary Jurisdiction was abolished, and that Jurisdiction was vested in Her Majesty to be exercised in a Court to be called "the Court of Probate."

By the Divorce Act all Ecclesiastical Jurisdiction in Causes, Suits and Matters Matrimonial, except so far as relates to the granting of Marriage Licences was abolished, and this Jurisdiction was vested in Her Majesty to be exercised in a Court to be called "the Court for Divorce and Matrimonial Causes."

In these Courts, Serjeants and Barristers at Law, and Solicitors and Attornies were admitted to practise as well as Advocates and Proctors.

The effect in Doctors' Commons of this Reform in the Ecclesiastical Courts, particularly with reference to the Testamentary Jurisdiction was considerable.

The chief Ecclesiastical Courts in the kingdom, viz.; the Prerogative Court of Canterbury and the Court of Arches were in Doctors' Commons. The Jurisdiction of the Prerogative Court was entirely of a Testamentary character, consequently that Court became extinct. The Court of Appeals also ceased to exist.

On the 12th January, 1858, the Judge of the Court of Probate held his first Court, it was at Westminster, and the Courts of Probate and Divorce have ever since been held there.

The Arches Court, the Admiralty Court, and the Consistory Court of the Bishop of London, which had hitherto held their Sittings in the Common Hall of Doctors' Commons, removed therefrom. The College of the Advocates was vacated, and the Hall in which these Courts were held and the College have since been destroyed.

The Registries attached to these Courts still remain in Doctors' Commons. The Prerogative Office or Registry of the Prerogative Court, was taken by Government and became, and now is, the Principal Registry of Her Majesty's Court of Probate.

In the subsequent parts of this Book further details will appear of the effect the Reform of the Ecclesiastical Courts produced in Doctors' Commons.

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## PART II.

## DOCTORS' COMMONS:

ITS COURTS AND COLLEGE: ARCHES COURT:  
ADMIRALTY COURT: PREROGATIVE COURT:  
APPEALS COURT: CONSISTORY COURT.

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BETWEEN St. Paul's Cathedral and the Thames there is a Street called Great Knight Rider Street. At the end of this Street, adjoining Bennet's Hill there recently stood the College of the Doctors' of Civil and Canon Laws.

This College consisted of a Court or Common Hall with a Library and Dining room attached, and a number of houses in which the Judges and Advocates of the Court resided or had Chambers. The houses enclosed two Court yards, the largest of which had the main entrance.

It was an archway facing Great Knight Rider Street; opposite this archway, across the yard, there was another archway, on the left of which were two doors opening into the court; on the right of the court, as entered, was the Dining room, and above that the Library.

Through this second archway was another Court yard and a Garden belonging to the College. Respecting the origin of this College, it appears\* that before the Reign of Henry the VIII the Civilians or Doctors' of the Civil and Canon Law did not form a distinct Society, but about the beginning of that Reign, Dr. Richard Bodewell, Dean of the Arches and other Civilians and Canonists formed a Plan of Association and agreed to dwell in contiguous houses and enjoy a community of board. The Dean, by virtue of his office became the first President of the Society, which was by him denominated "the College of Doctors and Advocates of the Court of Arches," at that time all the Advocates not being Doctors of Laws. For more than fifty years from this voluntary incorporation there appears to have been no record of the particular spot which the

\* See Dr. Coote's Catalogue of Civilians, 1804, and Law Magazine, October, 1860,

Members occupied, but in February, 1568, Dr. Henry Hervey, Dean of the Arches, procured from the Dean and Chapter of the Diocese of London, a Lease of Mountjoy House and other buildings in the Parish of St. Benet, Paul's Wharf for the use and accommodation of the Advocates. Mountjoy House was a "ruinous building," and stood on the site of this College.

Dr. Hervey made a present of it to the Judges and Advocates of that period and they repaired it so as to make it habitable. The Doctors then took up their abode there.

Their "community of board" or "dining in common" was the origin of the name "Doctors' Commons."

Mountjoy House was destroyed in the Great Fire of London, in the Autumn of 1666. That fire has been described as "a sea of flame, two miles in length and one in breadth, and destroyed 13,000 houses and 87 Parish churches, and it left the site of St. Paul's a smouldering heap of ruins."

After the destruction of Mountjoy House the Civilians held their Courts at Exeter House, in the Strand. In 1670 they, however, obtained a new lease of the property from the Dean and Chapter for sixty years, and shortly afterwards commenced re-building the College. In 1672 the College was re-built, and then Charles the II authorized and required the Doctors to occupy it.

The Court of Arches; the Prerogative Court of Canterbury: the Court of the Bishop of London; and also the Court of Admiralty (except for Criminal cases) were thenceforward held in the Common Hall of this College.

From the period of this establishment of Doctors' Commons no great change appears to have taken place until the year 1858, although another Court, called the "Appeals" had been added to the Courts already mentioned. The Order of these Courts on the Term Cards stood thus: Arches, Admiralty, Prerogative, Appeals, Consistory.

Taking them in this order, a brief reference will now be made to each, with a view of showing how they have been severally affected by the Reform in the Ecclesiastical Courts.

## ARCHES COURT

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THE Arches Court is the highest Ecclesiastical Court in the Province of Canterbury, being the Court of the Archbishop.

"After the elevation of the First William to the English Throne, says a learned Civilian, (1) every Prelate had a regular Court in which he or his Chancellor took cognizance of acts of impiety and breaches of morality, and decided Religious, Matrimonial and Testamentary Causes. The highest Court of this kind was that of the Arches, so called from Bow Church, in which it was holden."

Or, according to another account, (2) "Arches or Court of Arches, the chief Consistory belonging to the Archbishop of Canterbury, for debating of spiritual Causes, so called, because it is kept in Bow Church, the top of whose steeple is raised of stone pillars, builded archwise like so many bent bows"

Respecting the Testamentary Jurisdiction of this Court, it appears that "in 1443 Archbishop Stafford removed for ever from the Court of Arches (of which his official principal was Judge) its original Jurisdiction over Wills and Intestacies, transferring the discharge of the office of the Prerogative to an entirely new functionary, who should preside in a distinct and separate Court, dignified with the appellation and style of Commissary of the Prerogative Court of Canterbury."†

By the Act to amend the Law relating to Divorce and Matrimonial Causes in England, passed in 1857, the Jurisdiction of the Court of Arches in causes of this nature was abolished, hence its Jurisdiction is now limited to questions of morality and religion.

The Court decides questions of Church rates, Pew rights, Deseccration of Church yards, Demolition of Churches,

(1) Dr. Coote's Catalogue of Civilians, 1804. (2) Philip's Dictionary, 1671.

† Coote's Ecclesiastical Practice, preface, page 81,

Alterations in Churches without a Faculty ; against granting a Faculty, offences under the Church discipline Act, Sequestration for debts, Suits for Faculties for erecting Churches ; for erecting Schools in Church yards ; for Tablets, or Grave stones ; for removing Bodies, &c.

It disposes of Suits of this nature by Letters of Request from inferior Ecclesiastical Courts, which it is said are in almost every case issued, as a matter of course, by the Judges of such Courts and by virtue of which their Jurisdiction is waived, and the Cause is commenced at once in the Court of Arches ; this practice is founded on the advantage to all parties, of engaging in the first instance the superior skill and experience of the Proctors, Advocates, Officials and Judge of the higher Court.

The Court of Arches is also a Court of Appeal, from inferior Ecclesiastical Courts within the Province, its Appellate Jurisdiction extending over all causes cognizable in these Courts.

The Court is now held at Westminster.

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## ADMIRALTY COURT.

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IN an interesting "Treatise on the Jurisdiction of the High Court of Admiralty of England ;" \* by Edwin Edwards, Esq., one of the Proctors of Doctors' Commons, it is said that "before England had a Fleet, viz., a navy so organized as to deserve the name, there appears to have been a great Officer of State who was intrusted with the custody of the Sea ; such person being called in those Commissions which are preserved to us, the Custos maris and his charge was said to be that of Maritime England."

"All the Commissions or Patents, from the King to his Admirals, previous to the reign of King John, are lost, so that we are unable to observe what were the kind of

\* Published 1847.



duties which belonged to this Officer. The duties of the Admirals who succeeded as well to the custody of the Sea, as to that of the Fleet, appear to have been not only to command Ships in battle, and to superintend the naval strength of the kingdom, but to administer justice in all Causes arising on the Seas. The latter duties are now, as heretofore, executed by the High Court of Admiralty, the former are now under the control of that Department of the Government, called the Admiralty."

"The authority of the Admiral was deputed, but the greatest obscurity remains as to when the Admiral first received his judicial authority from the Crown, and it is no unfair presumption that we are indebted to King Edward the First for the better establishing the jurisdiction of the Admirals, and perhaps for the organization of the first Admiralty Court which deserved the name."

Respecting Jurisdiction, it is said that by a very early Statute relating to the Admiralty Jurisdiction, it was enacted that the Admiralty Court should have no authority to try causes within the bodies of Counties, but only those arising upon the High Seas.

In an elaborate Work by another Proctor it is said.

"The High Court of Admiralty is, strictly speaking, the Court of the Lord High Admiral of England, the Judge being styled his Lieutenant, but since the office of the Lord High Admiral has been in Commission the Judge has been appointed by the Crown, and the process of the Court has issued in the name of the Sovereign."\*

The Judge is appointed by Letters Patent, under the Great Seal of the United Kingdom, which constitute him official Principal and Commissary General and Special in the High Court of Admiralty of England, and Lieutenant and Judge of the same.

The Jurisdiction of this Court is of a two-fold nature, there is the Instance Court, and the Prize Court. By virtue of his Patent the Judge exercises the Instance Jurisdiction, which consists of Causes relating to Salvage, Damage by collision, Bottomry, Actions for Necessaries supplied to Foreign Ships, Towage, Wages, Pilotage, Possession and other such questions.

The Prize Jurisdiction relates to Cases of disputed Capture, and seizures of a Maritime nature in time of War.

The Prize Jurisdiction originates in a Commission under the sign Manual and the Great Seal of the United Kingdom, addressed to the Lords Commissioners of the Admiralty for the time being. This Commission recites that His Majesty with the advice of His Privy Council, has ordered that general reprisals should be granted against the ships, goods and subjects of a certain power, therein named, subject to such exceptions as His Majesty may at any time thereafter be pleased to declare; and the Commission, therefore, authorises and enjoins the Commissioners of the Admiralty to require the High Court of Admiralty of England, and the Lieutenant and Judge of the said Court and his Surrogates, and they are thereby authorized and required judicially to proceed upon all captures, seizures, and prizes of ships, vessels, and goods taken, and to hear and determine the same according to the course of Admiralty and Law of Nations; and to adjudge and condemn all such ships, vessels, and goods as shall belong to the power named, or to any persons being subjects of, or inhabiting within the territories of the same, saving such exceptions as His Majesty might at any time be pleased to declare. Upon the authority of this Commission a Warrant is issued by the Lords Commissioners of the Admiralty, requiring the High Court of Admiralty of England, and the Lieutenant and Judge of such Court and his Surrogates judicially to proceed upon the captures, seizures and prizes, and, according to the course of Admiralty and Law of Nations to condemn all such ships, vessels and goods as shall belong to the Country, and persons named or described in the Original Commission (with the exceptions therein referred to), which will be brought before the Judge for trial and condemnation. His Majesty's Commission above mentioned, and the Warrant of the Lords Commissioners of the Admiralty being presented to the Judge by the Registrar of the Court, or his Deputy, the Judge on behalf of himself and his Surrogates, accepts the same and decrees to proceed according to the tenor of such Commission and Warrant, of which acceptance a memorandum is entered in the Records of the Court of Admiralty. (1).

A separate Commission and Warrant usually issues to authorize the seizure of and adjudication upon the vessels of each state against which War is declared. (2).

(1) Commissioners Report, 1824. (2) Pritchard's Admiralty Digest.

The criminal Jurisdiction of this Court was formerly as extensive as its civil Jurisdiction.

The Admiralty Session for Trial of Criminal Causes (Murder at Sea, Piracy, &c.), was for many years held at the Sessions house, in the Old Bailey.

The civil Court was formerly held at St. Margaret's Hill, Southwark, but for many years past its Sittings were held in the Common Hall of Doctors' Commons.

"In the afternoon (says an old writer) of the same day" "whereon, the Court of Arches is held the Court of Admiralty also sits for the decision of Maritime controversies;"\* hence it appears that its business was not so extensive as it has been of late years. It has long since had its regular Court days, in common with the other Courts.

The Advocates and Proctors of the Court of Arches were entitled to practise in the Admiralty Court upon being admitted by the Judge.

In 1859, it was enacted by Parliament that all Serjeants and Barristers-at-Law, and all Attornies-at-Law and Solicitors should be entitled to practise as Serjeants, Barristers, Attornies and Solicitors respectively, in all matters and causes whatsoever in Her Majesty's High Court of Admiralty.

The Admiralty Court now holds its Sittings at Westminster, under an Order in Council of the 23rd January, 1860.

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## PREROGATIVE COURT.

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THE Prerogative Court of Canterbury was the Chief Testamentary Court in England. Its Jurisdiction was entirely of a Testamentary nature, consequently when the Testamentary Jurisdiction was transferred to the Court of Probate, the Prerogative Court ceased to exist.

The origin of this Court has been mentioned in speaking of the Arches Court.

The Judge and principal Registrar were appointed by the Archbishop of Canterbury. The duties of the Registrar were performed by three Deputy Registrars, who were appointed by the Registrar, subject to approval by the Judge, and confirmation of the appointment by the Arch-

\* The Proctors' Practice, by P. Floyer, 1746.

bishop. The Prerogative Court had Jurisdiction of all Wills and Administrations of personal property, left by persons having *bona notabilia*, or effects of a certain value, in divers Jurisdictions within the province. Respecting *bona notabilia*, Blackstone says,\* “if all the goods of the deceased lie within the same Jurisdiction a Probate before the Ordinary, or an Administration granted by him are the only proper ones; but if the deceased had *bona notabilia* or chattels to the value of a hundred shillings in two distinct dioceses or Jurisdictions, then the Will must be proved, or Administration taken out before the Metropolitan of the Province, by way of special Prerogative, whence the Courts where the validity of such Wills is tried and the offices where they are registered, are called the Prerogative Courts and the Prerogative Offices of the Provinces of Canterbury and York. A Prerogative is therefore very prudently vested in the Metropolitan of each Province to make in such Case one Administration serve for all.”

But the Law of *bona notabilia* was not so simple as here represented.

In the Commissioners Report of 1832, it is said, “the Law on the subject of *bona notabilia* is extremely complicated and ill defined. In all cases where Probate or Administration is taken out in any Court within the Province of Canterbury, except from the Prerogative Court, or perhaps a Royal Peculiar and in some cases other Peculiars; if it should afterwards appear that the deceased died possessed of *bona notabilia* within another Jurisdiction, the Probate or Administration is null and void. *Bona notabilia* are said to be constituted by the possession of personal property to the amount of £5 in another Jurisdiction. In some of the older cases, there are many nice discussions as to the amount and mode by which *bona notabilia* shall be determined.”

This Law of *bona notabilia* and the mode of taking evidence in writing were two of the principal objections urged against the Ecclesiastical Courts.

The Prerogative Court was formerly held in the Consistory of St. Paul's, and after its removal to Doctors' Commons it appears to have been held in the Common Hall, in the afternoon, and in the Dining Room, in the morning.†

\* Vol 2, Page 508. † Floyer's Proctors' Practice, 1746.

The Dining Room appears in former years to have been often used as a Court, but it was very seldom so used in modern times.

The business of the Prerogative Court was so extensive as to form the chief source of emolument to the entire profession in Doctors' Commons.

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## APPEALS COURT.

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IN this Court the preliminary steps were taken in Ecclesiastical, Testamentary, and Maritime Causes referred to the Judicial Committee of Her Majesty's Most Honorable Privy Council. Prior to the year 1832, the Court of Delegates was the Court of Appeal from the superior Ecclesiastical Courts of London and York, but its anomalies and defects gave much dissatisfaction. Ecclesiastical Commissioners were therefore required by a Commission from the Lord Chancellor, dated 12th January, 1831, to report specially and immediately on the Jurisdiction of the Court of Delegates and the expediency of transferring that Jurisdiction to the Privy Council.

A special report was accordingly soon afterwards made. It recommended that the Appellate Jurisdiction of the Court of Delegates should be transferred to the Judicial Committee of the Privy Council, regulations being made to ensure regular sittings, and a due attendance of Privy Counsellors conversant with legal principles.

An Act of Parliament to carry out this recommendation passed in 1832.

Appeals were then made to the Privy Council and the preliminary steps in the Causes were taken before a Surrogate in the Court of Appeals, held in the Common Hall of Doctors' Commons.

Speaking of the Court of Delegates an old writer says, "the highest Court of all is the Court of Delegates, so called because the Judges are delegated, and sit by force of the King's Commission under the Great Seal, upon Appeals to him in his High Court of Chancery."\*

The Court was constituted for each separate case.

In ordinary causes the Delegates were three puisne Judges, one from each Court of Common Law, and three

\* Floyer's Proctors Practice, 1746.

or more Civilians, but in special cases a fuller commission sometimes issued consisting of spiritual and temporal Peers, Judges of the Common Law and Civilians, usually three of each description.

The decision of the Court was final, no further Appeal lying as matter of right; but a Petition might be presented to His Majesty in Council for a Commission of Review. This Petition was referred to the Lord Chancellor, who after hearing Counsel advised His Majesty thereon. (1).

The Court was held in the Dining Room of Doctors' Commons the day after the Prerogative; but when Sentence was given it was held in Serjeant's Inn Hall, in Chancery Lane.

Under the Probate Act of 1857,\* Appeals from any final or interlocutory Decree or Order of the Court of Probate are now made to the House of Lords, and under the Divorce Act of 1857, Appeals from the Judge Ordinary of the Divorce Court are made to the full Court,† and from the full Court to the House of Lords. (4).

In Maritime Cases also the preliminary proceedings in Appeals are no longer taken before a Surrogate of the Judicial Committee, but in the Registry of Her Majesty's Court of Appeals in Ecclesiastical and Maritime Causes in Doctors' Commons.

The Court of Appeals therefore formerly held in the Common Hall of Doctors' Commons has ceased to exist.

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## CONSISTORY COURT.

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The Consistory Court of the Bishop of London was held in the Common Hall of Doctors' Commons.

It has been affected in two ways by the operation of the Probate Act. Its Testamentary Jurisdiction has been abolished and its locality changed.

In other respects it is unaltered. It grants Faculties for the consecration and alteration of Churches and Burial Grounds, for removal of Corpses, hears all Causes under the Church Discipline Act within the diocese of London, and cases of subtraction of Church Rates, perturbation of Seats, &c.

Its sittings are now held at Westminster.

(1) Ecclesiastical Report 1832. \* Sec. 39. † Sec. 55. (4) Sec. 56.

PART III.

CONSTITUTION OF THE COURTS OF  
PROBATE AND DIVORCE—COUNTY COURTS.

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PROBATE COURT.

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THE Court of Probate was established under "An Act to Establishment of the Court amend the Law relating to Probates and Letters of Administration in England," passed in 1857. The preamble to the Act recites that, "Whereas it is expedient that all jurisdiction in relation to the grant and revocation of Probates of Wills and Letters of Administration in England should be exercised in the name of Her Majesty by one Court." It is enacted that, "The voluntary and contentious jurisdiction and authority of all Ecclesiastical, Royal Peculiar, Manorial, and other Courts and persons in *England* now having jurisdiction or authority to grant or revoke Probate of Wills or Letters of Administration of the effects of deceased persons, shall in respect of such matters absolutely cease." (A) And "The voluntary and contentious jurisdiction and authority in relation to the granting or revoking Probate of Wills and Letters of Administration of the effects of deceased persons now vested in, or which can be exercised by any Court or person in England, together with full authority to hear and determine all questions relating to matters and causes testamentary, shall belong to and be vested in Her Majesty, and shall (except as therein after is mentioned,) be exercised in the name of Her Majesty in a Court to be called 'The Court of Probate.'" (B) That there shall be one Judge of Her Majesty's Court of Probate, and it shall be lawful for Her Majesty from time to time, by letters patent under the Great Seal of the United Kingdom, to appoint a person, being or having been an Advocate of Judge.

Registrars.

10 years standing, or a Barrister-at-Law of 15 years standing, to be such Judge. (c) The Judge shall have rank and precedence with the Puisne Judges of Her Majesty's Superior Courts of Common Law at Westminster, according to the date of his appointment. (d) The Act further directs that there shall be three Registrars, two Record Keepers, and one Sealer for the principal Registry of the Court of Probate, and that there shall be one District Registrar for each District Registry, and so many clerks and other officers for the Court and the Principal Registry as the Judge of the Court, with the sanction of the Commissioners of Her Majesty's Treasury may from time to time think fit. (By sec. 6 of the Court of Probate Act of 1858, the Judge may appoint a fourth Registrar for the principal Registry.)

Advocates.

The 40th section of the Probate Act of 1857 provides that Advocates of the Ecclesiastical Courts shall be entitled to practise as Advocates or Counsel in all matters and causes whatsoever in the Court of Probate; and all Serjeants and Barristers-at-Law shall be entitled to practise as Advocates or Counsel in all contentious matters and causes in the said Court. The 2nd sect. of the Act, 1858, enacts that, "All Serjeants and Barristers-at-Law shall be entitled from and after the passing of this Act to practise in all causes and matters whatsoever in the Court of Probate."

Barristers.

Solicitors.

The 42nd sect. of the Act of 1857 provides that Proctors in the Courts in Doctors' Commons, or in the Prerogative Court of York, or in any Diocesan or Archidiaconal Court, may be admitted as Proctors in the Court of Probate. The 43rd sect. of the same Act provides that the Registrar or Deputy Registrar of any Ecclesiastical Court may, upon stated conditions, be admitted as a Solicitor of the High Court of Chancery, and be afterwards admitted and enrolled as an Attorney of Her Majesty's superior Courts. The 45th sect. of the same Act provides, "That all Solicitors and Attornies-at-Law may practise in the Court of Probate, and that the Commissioners for taking Oaths in the High Court of Chancery shall be Commissioners for taking Oaths in the Court of Probate."

Commissioners  
for taking  
Oaths.

Seals.

The Judge is directed to cause Seals to be made for the Court of Probate: one seal to be used in its principal Registry, and separate seals to be used in the several District Registries; and he may cause the same respectively



from time to time to be broken, altered and renewed at his discretion; and all Probates, Letters of Administration, Orders and other Instruments, and Exemplifications and copies thereof respectively, purporting to be sealed with any seal of the Court of Probate, shall in all parts of the United Kingdom be received in evidence without further proof thereof. (F) The Court of Probate is constituted a Court of Record. Suits for Legacies and suits for the Distribution of Residues are not to be entertained. (G) It may require the attendance of any party in person, or of any person whom it may think fit to examine or cause to be examined in any suit or other proceeding in respect of matters or causes testamentary, and may examine or cause to be examined upon oath or affirmation, as the case may require, parties and witnesses by word of mouth and may, either before or after or with or without such examination, cause them to be examined on interrogatories, or receive their affidavits or solemn affirmations; and may by writ require their attendance, and order to be produced before itself or otherwise any deeds, evidences, or writings, in the same form, or nearly, as may be, as that in which a writ of subpoena, *ad testificandum*, or of subpoena *duces tecum*, is now issued by any of Her Majesty's superior Courts of Law at *Westminster*; and every person disobeying any such writ is to be considered as in contempt of the Court, and be liable to forfeit a sum not exceeding one hundred pounds. (H)

Court of Record.

Examination of Witnesses.

The Court has the like powers, jurisdiction, and authority for enforcing the attendance of persons and for punishing persons failing, neglecting, or refusing to produce deeds, evidences, or writings, or refusing to appear or to be sworn, or make affirmation or declaration, or to give evidence, or who are guilty of contempt, and generally for enforcing all orders, decrees, and judgments as are by law vested in the High Court of Chancery for such purposes. (I)

Power to enforce attendance and produce Deeds.

The Court of Probate may also on motion or petition, or otherwise, in a summary way, whether any suit or other proceeding be or be not pending, order any person to produce and bring into the Principal or any District Registry, or otherwise as the Court may direct, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such

Production of Papers.

person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined in open Court, or upon interrogatories respecting the same, and such person is bound to answer such questions or interrogatories, and, if so ordered, to produce and bring in such paper or writing, and is subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories, or not bringing in such paper or writing, as he would be subject to in case he had been a party to a suit in the Court, and had made such default; and the costs of any such motion, petition, or other proceeding are in the discretion of the Court. (K)

Oral Examination.

Affidavits.

Evidence, Witness out of Jurisdiction or ill.

Rules of Evidence.

Subject to the regulations to be established by rules and orders, the witnesses, and where necessary the parties, in all contentious matters where their attendance can be had, are to be examined orally by or before the Judge in open Court; provided that, subject to any such regulations, the parties shall be at liberty to verify their respective cases, in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of such opposite party orally in open Court, and after such cross-examination may be re-examined orally in open Court by or on behalf of the party by whom such affidavit was filed. (L)

Where a Witness is out of the jurisdiction of the Court, or where, by reason of his illness, or otherwise, the Court does not think fit to enforce his attendance in open Court, the Court may order a Commission to issue for the examination of such Witness on oath, upon interrogatories or otherwise, or if the Witness be within the jurisdiction of the Court, may order the examination of such Witness on oath, upon interrogatories or otherwise, before any officer of the Court, or other person to be named in such order for the purpose; and all the powers given to the Courts of Law at *Westminster* are to extend and be applicable to the Court of Probate. (M)

The Rules of Evidence observed in the superior Courts

of Common Law at *Westminster* are to be applicable to and observed in the trial of all questions of fact in the Court of Probate. (N)

The Judge may sit, with the assistance of any Judge or Other Judges. Judges of any of the superior Courts of Law at *Westminster*, who, upon the request of the Judge of the Court of Probate, may find it convenient to attend for that purpose. (O)

The Judge may cause any question of fact arising in any suit or proceeding to be tried by a Special or Common Jury Special or Common Juries. before the Court itself, or by means of an issue to be directed to any of the superior Courts of Common Law, in the same manner as an issue may now be directed by the Court of Chancery, and such question is to be so tried by a Jury in any case where an Heir-at-Law, cited, or otherwise made Heir-at-Law. party to the suit or proceeding, makes application to the Court of Probate for that purpose; and in any other case where all the parties to the suit or proceeding concur in such an application, and where any party or parties other than the Heir-at-Law make a like application, (the other party or parties not concurring therein), and the Court refuses to cause such question to be tried by a Jury, such refusal is subject to appeal. (P)

The powers of the Court for the trial of questions by a Jury are the same as those belonging to any superior Court Powers of the Court as to Jury. of Common Law or the High Court of Chancery. (Q)

When any question is ordered to be tried by a Jury, before the Court itself, such question is to be reduced into writing in such form as the Court shall direct, and at the trial the Jury is to be sworn to try the question, and a true verdict to give thereon according to the evidence. Upon every such trial the Court of Probate has the same powers, jurisdiction, and authority as any Judge of any of the superior Courts sitting at *nisi prius*. (R) Question to be in Writing.

Where the Court of Probate directs an issue, it may Issue at Assize. direct it to be tried either before a Judge of Assize in any County, or at the Sittings for the Trial of Causes in *London* or *Middlesex*, and either by a Special or Common Jury, in like manner as is now done by the Court of Chancery. (S)

Any person considering himself aggrieved by any final or interlocutory decree or order of the Court of Probate, may appeal therefrom to the House of Lords, provided that Appeal. no appeal from any interlocutory order is to be made with-

out leave of the Court first obtained, but on the hearing of an appeal from any final decree all interlocutory orders complained of shall be considered as under appeal as well as the final decree. (t)

Where proceedings are taken under this Act for proving a Will in solemn form, or for revoking the Probate of a Will, on the ground of the invalidity thereof, or where in any other contentious cause or matter under this Act the validity of a Will is disputed, unless in the several cases aforesaid, the Will affects only personal estate, the Heir-at-Law, Devisees, and other persons having or pretending interest in the real estate affected by the Will, are subject to the provisions of the Act, and to the rules and orders made under it, to be cited to see proceedings, or otherwise summoned in like manner as the next of kin, or others having or pretending interest in the personal estate affected by the Will, and may become parties, or intervene for their respective interests in such real estate, subject to the rules and orders and to the discretion of the Court. (v)

Where the Will is proved in solemn form, or its validity otherwise decided on, the decree of the Court is binding on the persons interested in the real estate. (v)

But there is nothing in the Act to make it necessary to cite the Heir-at Law or other persons having or pretending interest in the real estate of a deceased person, unless it is satisfactorily shown to the Court that the deceased was at the time of his decease seised of, or entitled to, or had power to appoint by will some real estate beneficially ; nor is it necessary where the will propounded, or of which the validity is in question would not in the opinion of the Court, though established as to personalty, affect Real Estate, but in every such case, and in any other case in which the Court may, with reference to the circumstances of the Property of the deceased or otherwise, think fit, the Court may proceed without citing the heir, or other persons interested in Real Estate ; provided that the Probate, Decree, or Order of the Court shall not in any case affect the heir, or any person in respect of his Interest in Real Estate, unless such heir or person has been cited or made party to the proceedings, or derives Title under or through a person so cited or made party. (w)

In any Action at Law or Suit in Equity, where, according to the existing Law, it would be necessary to produce and prove an original Will in order to establish a Devise or other Testamentary Disposition of or affecting Real Estate, the Party intending to establish in Proof such Devise or other Testamentary Disposition may give to the opposite Party, Ten Days at least before the Trial or other Proceeding, in which the said Proof shall be intended to be adduced, Notice that he intends to give in Evidence as Proof of the Devise or other Testamentary Disposition the Probate of the said Will, or the Letters of Administration with the Will annexed, or a copy thereof stamped with any Seal of the Court of Probate ; and in every such Case such Probate or Letters of Administration, or Copy thereof respectively, stamped as aforesaid, is to be sufficient Evidence of such Will and of its Validity and Contents, notwithstanding the same may not have been proved in solemn Form, or have been otherwise declared valid in a contentious Cause or Matter, unless the Party receiving such Notice shall, within Four Days after such Receipt, give Notice that he disputes the Validity of such Devise or other Testamentary Disposition. (x)

Probate, Administration, or Copy given in Evidence.

In every Case in which, in any such Action or Suit, the Original Will shall be produced and proved, the Court or Judge before whom such Evidence shall be given may direct by which of the parties the Costs thereof shall be paid. (y)

Costs.

The Court may also appoint Administrators pendente lite or Receivers of Real Estate pendente lite, and award them such reasonable remuneration as it may think fit (z) (By the Twenty-first Section of the Probate Act of 1858, the Court may require security from a receiver of Real Estate.)

Administrators and Receivers pendente lite.

Where a Person has died wholly intestate as to his Personal Estate, or leaving a Will affecting Personal Estate, but without having appointed an Executor thereof, willing and competent to take Probate, or where the Executor shall at the time of the Death of such person be resident out of the United Kingdom of *Great Britain and Ireland*, and it appear to the Court to be necessary or convenient in any such Case, by reason of the Insolvency of the Estate of the Deceased, or other special circumstances, to appoint

Administration or Administration Will under special circumstances.

some Person to be the Administrator of the Personal Estate of the Deceased, or of any Part of such Personal Estate, other than the Person who if this Act had not been passed would by Law have been entitled to a Grant of Administration of such Personal Estate, it is not obligatory upon the Court to Grant Administration of the Personal Estate of such deceased Person to the Person who if this Act had not passed would by Law have been entitled to a grant thereof, but the Court, in its Discretion, may appoint such Person as it shall think fit to be such Administrator upon his giving such Security (if any) as the Court shall direct, and every such Administration may be limited as the Court shall think fit.\*

Court may grant administration to whom it thinks fit.

Taxation of Costs

The Bill of any Proctor, Attorney or Solicitor, for any Fees, Charges, or Disbursements in respect of any business transacted in the Court of Probate, whether contentious or otherwise, or any matters connected therewith, shall, as well between Proctor or Attorney or Solicitor and Client as between Party and Party, be subject to Taxation by any one of the Registrars of the said Court, and the mode in which any such Bill shall be referred for Taxation, and by whom the costs of Taxation shall be paid, shall be regulated by the rules and orders to be made under this Act, and the Certificate of the Registrar of the amount at which such Bill is taxed shall be subject to appeal to the Judge of the said Court.†

Fees in Stamps.

The Fees payable to the Officers of the Court of Probate in respect of business under this Act are not to be received in Money but in Stamps. (A)

Judge of Admiralty Court may sit for Judge of Probate Court.

The Probate Act of 1858 enacts that the Judge of the High Court of Admiralty may sit in open Court or in Chambers, for the Judge of the Court of Probate, and the Judge of the Court of Probate may sit in open Court or in Chambers for the Judge of the High Court of Admiralty. (B)

Judge may sit in Chambers.

The Judge may sit in Chambers for the dispatch of such part of business of the Court as can in his opinion with advantage to the Suitors, be heard in Chambers, at such times as he may fix, but no question is to be heard in Chambers which either party requires to be heard in open Court. (C)

Persons to take Oaths, Declarations, &c., in the Isle of Man, &c.

The Judge may appoint by Commission under Seal of the Court, any persons practising as Solicitors in the Isle

\* Sec. 73. † Sec. 96. (A) Sec. 97. (B) Sec. 1. (C) Sec. 3.

of Man, in the Channel Islands, or any of them, to administer Oaths, and to take Declarations or Affirmations, and to exercise any other powers which can be exercised by Commissioners of Her Majesty's Court of Probate. (1)

In Cases where it is necessary to obtain Affidavits, Declarations, or Affirmations to be used in the Court of Probate from persons residing in Foreign parts out of Her Majesty's Dominions, the same may be sworn, declared, or affirmed before the persons empowered to administer Oaths under the Act of the Sixth of *George* the Fourth, Chapter Eighty-seven, or under the Act of the Eighteenth and Nineteenth of *Victoria*, Chapter Forty-two; provided that in places where there are no such persons as are mentioned in those Acts such Affidavits, Declarations, or Affirmations may be made, declared, and affirmed before any Foreign local Magistrate, or other person having authority to administer an Oath. (2)

*Affidavits, before whom to be sworn when Parties making them reside in Foreign Parts.*

Affidavits, Declarations, and Affirmations to be used in the Court of Probate may be sworn and taken in *Scotland*, *Ireland*, the *Isle of Man*, the *Channel Islands*, or any Colony, Island, Plantation or Place out of *England* under the dominion of Her Majesty, before any Court, Judge, Notary Public, or Person lawfully authorized to administer Oaths in such Country, Colony, Island, Plantation, or Place respectively, or, so far as relates to the *Isle of Man* and the *Channel Islands*, before any Commissary, Ecclesiastical Judge, or Surrogate, who, at the time of the passing of the Court of Probate Act, was authorized to administer Oaths in the *Isle of Man* or in the *Channel Islands* respectively, and all Registrars and other Officers of the Court of Probate are to take judicial Notice of the Seal or Signature, as the case may be, of any such Court, Judge, Notary Public, or Person, which shall be attached, suspended, or subscribed to any such Affidavit, Declaration or Affirmation, or to any other Document. (3)

*Affidavits, before whom to be sworn in Scotland, &c.*

The Court of Probate sits at Westminster.

*Court at Westminster.*

(1) Sec. 30. (2) Sec. 31. (3) Sec. 32.

## DIVORCE & MATRIMONIAL COURT.

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Establishment  
of Divorce  
Court.

THIS Court was established under "An Act of Parliament to amend the Law relating to Divorce and Matrimonial Causes in England," passed in 1857. It enacts that "As soon as the Act comes into operation all jurisdiction now exercisable by any Ecclesiastical Court in England in respect of Divorce, *à Mensâ et Thoro*, suits of nullity of marriage, suits of Jactitation of marriage,\* suits for restitution of conjugal rights and in all causes suits and matters matrimonial, shall cease to be so exercisable, except so far as relates to the granting of Marriage Licences, which may be granted as if this Act had not been passed, (A) and that all the above jurisdiction (except in respect of Marriage Licences) shall be vested in Her Majesty and such jurisdiction together with the jurisdiction conferred by this Act shall be exercised in the name of Her Majesty in a Court of Record to be called 'The Court for Divorce and Matrimonial Causes.'" (B)

It enacts that no decree shall hereafter be made for a Divorce *à Mensâ et Thoro*, but in all cases in which a decree for a Divorce *à Mensâ et Thoro*, might have been pronounced the Court may pronounce a decree for a judicial separation, which shall have the same force and the same consequences as a Divorce *à Mensâ et Thoro* had. (C)

Judges.

The Lord Chancellor, the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, the Lord Chief Baron of the Court of Exchequer, the Senior Puisne Judge for the time being in each of the three last-mentioned Courts, and the Judge of Her Majesty's Court of Probate are constituted the Judges of the said Court. (D)

(By an Act to make further provision concerning the Court for Divorce and Matrimonial Causes passed in 1859, it is enacted that in addition to the Judges mentioned above, all the Judges for the time being of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively,

\* The false and malicious boasting of marriage.

(A) Sec. 2. (B) Sec. 6. (C) Sec. 7. (D) Sec. 8.



not already made Judges of the Court for Divorce and Matrimonial Causes shall be Judges of such Court. Sec. 1)

The Judge of the Court of Probate is the Judge Ordinary of the Court of Divorce, and has full authority, either alone or with one or more of the other Judges of the said Court, to hear and determine all matters arising therein, except petitions for the dissolving of or annulling Marriage, and applications for New Trials of Questions or issues before a Jury, Bills of Exception, Special Verdicts and Special Cases, and, except as aforesaid, may exercise all the powers and authority of the said Court. (E)

All petitions, either for the dissolution, or for a sentence of Nullity of Marriage, and applications for new trials of questions or issues before a Jury, are to be heard and determined by three or more Judges of the said Court, of whom the Judge of the Court of Probate shall be one. (F)\*

During the temporary absence of the Judge Ordinary, the Lord Chancellor may authorize the Master of the Rolls, the Judge of the Admiralty Court, or either of the Lords Justices, or any Vice Chancellor, or any Judge of the superior Courts of Law at *Westminster*, to act as Judge Ordinary of the Court for Divorce. (G)

The Court may hold its sittings at such place or places in *London* or *Middlesex*, or elsewhere, as Her Majesty in council shall from time to time appoint. (H)

The Lord Chancellor is to direct a Seal to be made for the said Court, and may direct the same to be broken, altered, and renewed at his discretion; and all decrees and orders, or copies of decrees or orders, of the Court, sealed with this Seal, are directed to be received in evidence. (I)

A sentence of Judicial Separation may be obtained, either by the husband or wife, on the ground of Adultery, or Cruelty, or Desertion without cause for two years and upwards. (K)

The Registrars and other officers of the Principal Registry of the Court of Probate are to attend the Sittings of the Court for Divorce and Matrimonial Causes, and assist in the proceedings thereof, as shall be directed by the rules and orders under this Act.† (By sect. 4 of an Act passed in 1858, 21 & 22 Vic., cap. 108, the Registrars of the Principal

(E) Sec. 9. (F) Sec. 10. (G) Sec. 11. (H) Sec. 12. (I) Sec. 13. (K) Sec. 16. †Sec. 14.

\* By the Act 23 & 24 Vic., c. 144, (made perpetual by 25 & 26 Vic., c. 81) the Judge Ordinary alone, or with the assistance of one other Judge of the Court may exercise all the powers previously vested in the full Court.

Registry are invested with and may exercise with reference to the proceedings in the Court for Divorce and Matrimonial Causes the same power and authority which Surrogates of the Official Principal of the Court of Arches could, before the passing of the 20 & 21 Vic., cap. 77 have exercised in chambers with reference to proceedings in that Court.)

Restitution of  
Conjugal rights,  
or Judicial  
separation.

Application for Restitution of Conjugal Rights or for Judicial Separation may be made by either husband or wife, by petition to the Court, or to any Judge of Assize at the Assizes held for the county in which the husband and wife reside or last resided together, and the Judge of Assize is authorized and required to hear and determine such petition, according to the rules and regulations which shall be made under the authority of this Act, and the Court or Judge to which such petition is addressed, on being satisfied of the truth of the allegations therein contained, and that there is no legal ground why the same should not be granted, may decree such restitution of Conjugal Rights or Judicial Separation accordingly, and where the application is by the wife, may make any order for alimony which shall be deemed just; provided always, that any Judge of Assize to whom such petition shall be presented may refer the same to any of Her Majesty's Counsel or Serjeant-at-Law named in the Commission of Assize or *nisi prius* and such Counsel or Serjeant shall, for the purpose of deciding upon the matters of such petition, have all the powers that any such Judge would have had by virtue of the Act or otherwise. (L)

Power of Police  
Magistrates  
and Justices in  
Petty Sessions.

A wife deserted by her husband may at any time after such desertion, if resident within the Metropolitan district, apply to a Police Magistrate, or if resident in the country, to Justices in petty sessions, or in either case to the Court, for an order to protect any money or property she may acquire by her own lawful industry, and property which she may become possessed of after such desertion, against her husband, or his creditors, or any person claiming under him; and such Magistrate or Justices or Court, if satisfied of the fact of such desertion, and that the same was without reasonable cause, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and property

acquired since the commencement of such desertion, from her husband, and creditors, and persons claiming under him, and her earnings and property then belong to the wife as if she were a *feme sole*. Every such order made by a Police Magistrate or Justices at Petty Sessions shall within ten days after the making thereof, be entered with the Registrar of the County Court within whose jurisdiction the wife is resident, and the husband, and any creditor, or other person claiming under him may apply to the Court or to the Magistrate or Justices by whom such order was made to discharge it. If the husband, or any creditor of, or person claiming under him shall seize or continue to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife, to restore the specific property, and to pay a sum equal to double the value of the property so seized and held after such notice. If any such order of protection be made, the wife shall during its continuance be and be deemed to have been during such desertion of her, in the like position in all respects with regard to property and contracts, and suing and being sued, as she would be if she had obtained a decree of Judicial Separation. (M)

A Decree of Separation obtained during the absence of husband or wife may be reversed, on showing that there was reasonable ground for desertion, where desertion was the ground of such decree. (N)

Either the wife or husband may present a petition praying that the Marriage may be dissolved on the ground of Adultery. Upon any such petition presented by a husband the Petitioner shall make the alleged Adulterer a Co-Respondent to the said petition, unless on special grounds, to be allowed by the Court, he shall be excused for so doing; and on every petition presented by a wife for Dissolution of Marriage the Court, if it see fit, may direct that the person with whom the husband is alleged to have committed adultery be made a Respondent, and the parties or either of them may insist on having the contested matters of fact tried by a Jury. In every case the Court is to be satisfied of the absence of collusion. (O)

A Husband may, either in a Petition for Dissolution of Marriage or for Judicial Separation, claim Damages against the Co-respondent—and the damages to be recovered shall

in all cases be ascertained by verdict of a Jury, although the Respondents or either of them may not appear; and after the verdict has been given the Court shall have power to direct in what manner such damages shall be paid or applied, and to direct that the whole or any part thereof shall be settled for the benefit of the children (if any) of the marriage, or as a provision for the maintenance of the wife—and the Court may order the Co-respondent to pay the whole or any part of the Costs of the proceedings. (P)

Children.

Costs.

Rules of Evidence.

The Rules of Evidence observed in the superior Courts of Common Law at *Westminster* are applicable to and observed in the trial of all questions of fact in the Divorce Court. (Q)

Suits in *forma pauperis*.

The Court may make such rules and regulations as it may deem necessary and expedient for enabling persons to sue in the Court *in formâ pauperis*. (R)

Appeal to full Court.

Either party dissatisfied with a decision of the Judge Ordinary alone, may within three calendar months appeal therefrom to the full Court, whose decision is final. (S)

Appeal to House of Lords.

Either party dissatisfied with the decision of the full Court, on any petition for the dissolution of a marriage may, within three months, Appeal to the House of Lords, if Parliament be then sitting, or if Parliament be not sitting at the end of such three months then within fourteen days next after its meeting; and on the hearing of any such appeal the House of Lords may either dismiss the appeal or reverse the decree, or remit the case to the Court to be dealt with as their Lordships may direct. (T)

Marrying again.

Clergyman not compelled to perform Marriage Service.

When the time limited for appealing against any decree dissolving a Marriage has expired, and no appeal has been presented, or when any such appeal has been dismissed, or when in the result of any appeal any marriage has been declared to be dissolved, but not sooner; the respective parties thereto may marry again, as if the prior marriage had been dissolved by death. No Clergyman in Holy Orders of the United Church of *England* and *Ireland* is compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or liable to any suit, penalty, or censure for solemnizing or refusing to solemnize the marriage of any such person. (U)

When any Minister of any church or chapel shall refuse

to perform such marriage service between any persons who but for such refusal would be entitled to have the said service performed in such church or chapel, such Minister shall permit any other Minister in Holy Orders of the said United Church, entitled to officiate within the diocese in which such church or chapel is situate, to perform such marriage service in such church or chapel. (v)

After this Act came into operation, no action could be maintained in *England* for Criminal Conversation. (w) Action for Crim. Con. abolished.

The Fees are not to be received in money but by stamps. Fees.

The Court of Divorce is also the Court to which application is made under "The Legitimacy Declaration Act, 1858," which enacts that "Any natural born subject of the Queen or any person whose right to be deemed a natural born subject depends wholly or in part on his legitimacy or on the validity of a marriage being domiciled in *England* or *Ireland* or claiming any real or personal estate situate in *England* may apply by petition to the Court for Divorce and Matrimonial Causes. Legitimacy Declaration.

The Court of Divorce holds its sittings at *Westminster*. Court sits at Westminster.

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## COUNTY COURTS

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THE County Courts are it may be said, at present linked with Doctors' Commons, as the order to found their Testamentary Jurisdiction is obtained therefrom. Testamentary Jurisdiction.

By the 54th Section of the Probate Act of 1857, the County Court had Testamentary Jurisdiction in cases where the personal property of a deceased was under £200 and real property under £300, but that Section is repealed by the 11th Section of the Probate Act of 1858, and Section 10 of the Act of 1858 appears in lieu thereof.

It enacts that "where it appears by Affidavit to the satisfaction of a Registrar of the principal Registry, that the Testator or Intestate in respect of whose Estate a grant or revocation of a grant of Probate or Letters of Administration is applied for, had at the time of his death his fixed place of abode in one of the districts specified in Schedule (A) to the said Court of Probate Act, and that the personal Estate in respect of which such Probate or Letters of Administration are to be or have been granted, exclusive of what the deceased may have been possessed of or entitled to as a Trustee and not beneficially, but without deducting anything on account of the debts due and owing from the deceased was at the time of his death under the value of £200, and that the deceased at the time of his death was not seised or entitled beneficially, of or to any Real Estate of the value of £300 or upwards, the Judge of the County Court having Jurisdiction in the place in which the deceased had at the time of his or her death a fixed place of abode, shall have the contentious Jurisdiction and authority of the Court of Probate in respect of questions as to the Grant and revocation of Probate of the Will or Letters of Administration of the effects of such deceased person in case there be any contention in relation thereto."

Registrar of  
County Court  
to transmit  
Certificate of  
Decree for  
Grant or Revo-  
cation of  
Probate.

The 55th Section of the Probate Act of 1857, enacts that "on a Decree being made by a Judge of a County Court for the grant or revocation of a Probate or Administration in any such Cause, the Registrar of the County Court shall transmit to the District Registrar of the District in which it shall have been sworn that the deceased had at the time of his decease his fixed place of abode, a Certificate under the Seal of the County Court of such Decree having been made, and thereupon, on the application of the Party or Parties in favour of whom such Decree shall have been made, a Probate or Administration in compliance with such Decree shall be issued from such District Registry; or, as the case may require, the Probate or Letters of Administration theretofore granted shall be recalled or varied by the District Registrar according to the effect of such Decree."

The Judge of  
the County  
Court to decide  
Causes and  
enforce Judg-  
ments as in  
other Cases.

The Judge of any County Court before whom any disputed question is raised, relating to matters and Causes Testamentary, has subject to the Rules and Orders under this Act, all the Jurisdiction, Power, and Authority to

decide the same and enforce Judgment therein, and to enforce Orders in relation thereto, as if the same had been an ordinary Action in the County Court." (A)

The Affidavit as to the place of abode and state of the property of a Testator or Intestate which is to give contentious Jurisdiction to the Judge of a County Court is conclusive for the purpose of authorizing the Exercise of such Jurisdiction, and the Grant or Revocation of Probate or Administration in compliance with the Decree of such Judge; and no such Grant of Probate or Administration is liable to be recalled, revoked, or otherwise impeached by reason that the Testator or Intestate had no fixed place of abode within the Jurisdiction of such Judge, or within any of the said Districts at the Time of his Death, or by reason that the personal Estate sworn to be under the value of Two hundred Pounds, did in fact amount to or exceed that value, or that the value of the Real Estate of or to which the deceased was seised or entitled beneficially at the Time of his Death amounted to or exceeded Three hundred Pounds: Provided, that if it be shown to the Judge of a County Court before whom any Matter is pending under this Act that the place of abode or state of the Property of the Testator or Intestate has not been correctly stated in the Affidavit, and if correctly stated would not have authorized him to exercise such contentious Jurisdiction, he must stay all further Proceedings in his Court, leaving any Party to apply to the Court of Probate for such Grant or Revocation, and making such Order as to the Costs of the Proceedings before him as he may think just. (B)

"Any party who is dissatisfied with the determination of the Judge of the County Court in point of Law, or upon the admission or rejection of any evidence, may appeal to the Court of Probate, in such manner and subject to such regulations as may be provided by the Rules and Orders, and the decision of the Court of Probate on such Appeal shall be final." (C)

"It is not obligatory on any person to apply for Probate or Administration to any District Registry, or through any County Court, but in every case the application may be made through the Principal Registry, wherever the Testator or Intestate may at the time of his death have had his fixed place of abode. But if in any contentious Matter

Affidavit of the Facts giving the County Court Jurisdiction to be conclusive, unless disproved while the Matter is pending.

Appeal from County Court.

Not obligatory to apply for Probate, &c., to District Registries or County Court, but application may in every Case be made to Court of Probate.

it is shown to the Court of Probate that the state of the property and place of abode of the deceased were such as to give contentious Jurisdiction to the Judge of a County Court, the Court of Probate may send the Cause to such County Court, and the Judge thereof shall proceed therein as if such application and cause had been made to and arisen in his Court in the first instance." (A)

Rules and  
Orders for regu-  
lating the  
Procedure of  
County Courts  
under the Act  
to be made by  
the Judges now  
having  
authority for  
the like purpose.

"For regulating the Procedure and Practice of the County Courts, and the Judges, Registrars, and Officers thereof, in relation to their Jurisdiction and Proceedings, Rules and Orders may be from time to time framed, amended, and certified by the County Court Judges appointed for the time being to frame Rules and Orders for regulating the Practice of County Courts under the Statute of 19 and 20 Victoria, Chap. 108.

(A) Sec. 59.

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## PART IV.

REGISTRIES & OFFICES  
IN DOCTORS' COMMONS.

THE PRINCIPAL REGISTRY,  
ITS REGISTRARS AND DEPARTMENTS,  
DIVORCE REGISTRY,  
ADMIRALTY REGISTRY, ARCHES REGISTRY,  
CONSISTORY REGISTRY,  
APPEALS REGISTRY, SURREY REGISTRY,  
REGISTRY OF THE ARCHDEACONRY OF SURREY,  
FACULTY OFFICE, VICAR GENERAL'S OFFICE,  
OFFICE OF THE QUEEN'S PROCTOR,  
OFFICE OF THE MARSHAL OF THE ADMIRALTY.

## DISTRICT REGISTRIES.

The Public Registries and Offices in Doctors' Commons are:—

The principal Registry of Her Majesty's Court of Probate heretofore "The Prerogative Office of the Archbishop of Canterbury," and sometimes called the "Will Office."

The Divorce Registry.

Admiralty Registry.

Arches Registry.

Consistory Registry.

Appeals Registry.

Surrey Registry.

Registry of the Archdeaconry of Surrey.

Faculty Office.

Vicar General's Office.

Office of the Queen's Proctor.

Office of the Marshal of the Admiralty.

A brief statement respecting these Registries and offices will now be given, commencing with

## THE PRINCIPAL REGISTRY OF HER MAJESTY'S COURT OF PROBATE.

This Registry is considerably the largest in Doctors' Commons. In it is transacted under the authority and direction of the Court of Probate, the business of granting about 15,000 Probates of Wills and Letters of Administration annually.

All the preliminary business connected with motions and causes in Court, is transacted there. There are "Strong Rooms" in which are deposited wills and records for five centuries past. There also are innumerable papers connected with Wills, Administrations, and Court Business all available for public use.

The Registry consists of many departments, the most public of which will hereafter be separately described.

### REGISTRARS

There are four Registrars, appointed by the Judge, who execute their office in person and not by deputy.

### Duties in the Registry.

They have power to administer oaths, to tax costs, to grant orders for founding the testamentary jurisdiction of County Courts, to issue subpoenas for the production of testamentary papers, and they can exercise the power and authority which Surrogates of the Judge of the Prerogative Court exercised in chambers with reference to the proceedings in the Prerogative Court, and by the rules of the Court of Probate they may give leave to parties to intervene in Suits, they issue Warnings to Caveats, extend time for Appearances, allow Affidavits of Scripts to be seen by parties who have not filed their own, extend time for Pleading, settle questions for Juries, extend the time fixed by the rules for the performance of any Act, investigate Accounts of Administrators *pendente lite* and Receivers of Real Estate, pay money out of Court, issue Summonses, and grant Orders on Summonses and Orders of a different character for various purposes.

They may refuse to allow Probate or Letters of Administration to issue until the inquiries which they see fit to institute have been answered to their satisfaction. They may require to be furnished with Affidavits respecting the execution of Wills, or respecting interlineations, alterations, erasures, or obliterations appearing therein, or respecting deeds, lists, &c., referred to in Wills, or any peculiarity or mark appearing on the paper.

No Probate or Administration can pass under the Seal of the Court without their Signature.

They settle special Oaths, Citations, Abstracts of Citations, and Commissions.

Probates and Letters of Administration granted in *Ireland* and Confirmations decreed in *Scotland*, are authenticated by them, and when so authenticated have the effect of an English Probate, and they have to discharge a variety of duties in connection with the District Registries.

In addition to this Business in the Registry they have Duties in Court. duties in Court. One Registrar always attends the Judge when sitting in Chambers or in Court. By that Registrar a minute is entered of every Order made on Summons and of every proceeding in Chambers; he also calls the Motions and Causes in Court, enters in the Court Book every decree made on motion and every decision made by the Court in a cause, as well as the findings by Juries and the *Postcas on Records*.

The division of duty arranged amongst the Registrars Division of Duties. affords great public convenience.

The Term Registrar sits in Court during the entire term. The Registrar who last sat in Court becomes the taxing Registrar for the following term. Of the two remaining Registrars one acts for the week as the "signing Registrar." His duties are to sign all the grants of Probate and Administration put forward during his week, and to solve all questions concerning the daily business of the office during the same period. The remaining Registrar conducts the business connected with the District Registries; he and the signing Registrar take these duties in alternate weeks.

The Registrars have a general control over the whole staff and business of the Registry, but the conduct of the Registry itself is chiefly managed by the Senior Registrar.

In addition to these duties and powers in the Court of Probate the Registrars have similar duties and powers in the Divorce Court.

By the Divorce Act of 1858 they are invested with and Duties in Divorce Court. may exercise with reference to the proceedings in the Court for Divorce and Matrimonial Causes the same power and authority which Surrogates of the official principal of the Court of Arches could exercise, with reference to the proceedings in that Court.

Surrogates in the Prerogative and Arches Courts could

sit for the Judge and dispose of Motions and Assignations, and the Registrars of the Courts of Probate and Divorce in the long vacation hear Motions and Summonses.

Registrars  
Clerks.

Each Registrar has a Clerk, who attends the Registrar either at Court or in the Registry.

The most prominent duties of the Registrars' Clerks are to assist in examining the Records of all the Grants issued from the District Registries, returns of which are forwarded weekly to the Principal Registry; to prepare all Registrars' Orders for the alteration, notation, or revocation of Grants connected with the District Registries; to draw up all Orders on Summonses by Consent, and make copies of Orders for the trial of causes by Special Jury; to keep the Registrars' fee book, letters, and correspondence; to note the receipt and disposal of all original Wills received from or forwarded to the District Registries; to examine all taxed Bills with the Solicitors and endorse the Allocatur.

When attending the Registrar at Court their duties are to abstract the Divorce cases for each Motion day, to take a note of all Orders made in Chambers and Court, to receive Fees and keep the Fee-book, to note the names of all Witnesses produced in each cause, and number all documents put in Evidence in Causes, to endorse the postea on the Record, and generally to assist the Registrar in whatever branch of his duties he may require their assistance.

Departments.

The Principal Registry consists of many departments, in which the duties are extremely diversified.

Some of these departments existed in the Prerogative Registry, others are modern; the old departments with which the public are most concerned are:—

The Record Keepers.

Clerks of the Seats.

Clerk of the Papers.

Calendar Keeper.

Sealer.

The most public new departments are:—

The Receiver.

Examiners of Engrossments.

Correspondence Department.

Personal Applications Department.

Literary Department.

Department for Depositing the Wills of Living Persons.

A short account of the above-mentioned Departments will now be given.

## RECORD KEEPERS

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THE Record Keepers have the custody of all Wills which have been proved, and of the papers connected therewith ; also of Wills brought in on renunciation of Executors and from the Lunacy Office after they have passed the department of the Clerk of the papers. They have also the custody of all copies of Wills received from the District Registries, and of all Bonds and Papers connected with Letters of Administration after the grant has been made. They are also the custodians of all Papers in Probate Causes and Motions, and of all Divorce Papers after they have been filed three years.

Tickets for searches of Wills or Administrations are obtained from them and taken to the Calendar Keeper. Tickets for searches for any other Document in the Registry, and also for searches of Appearances to instruments in the Probate and Divorce Registries are likewise obtained from them.

Application must be made to the Record Keepers respecting Wills which are required to be attended with in the Country or in Law Courts in London, and all Office copies whether of Wills or other Documents are obtained from them.

Commissions for taking Oaths in the Court of Probate are registered with them, and by arrangement with the Officers of the Court, they have notice of Commissions issued for taking Oaths in Chancery

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## CLERKS OF THE SEATS.

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THE Clerks of the Seats transact what is called "Common form or non-contentious Business."

They prepare all Probates and Letters of Administration.

In cases of application for Letters of Administration, the necessary Papers are left with them by the Practitioner.

In cases of application for Probate or Administration with Will annexed, the papers are left with the Receiver, from

whom they pass to the Examiner, by whom the engrossment is collated with the Original Will; they are then handed by the Examiner back to the Receiver, from whom they pass to the Clerk of the Seat.

Each Seat takes its Business according as the first Letters of the Surname of the deceased agree with the following Alphabetical Arrangement:—

SEATS. A to Ch—Ci to Gd—Ge to Kek—Kel to Par—Pas to Std—Ste to Z.

The duties of the Clerks of the Seats cannot be better defined than in the following statement of the “objects of the Proctor’s care” with reference to Grants. The statement accurately represents the duties of the Practitioner with reference to Grants, but the name of the writer cannot be supplied.

“A Will must be inspected in the first instance with reference to the provisions of the Wills Act, to see if it is duly executed, regard being had to what is necessary to its validity, or if there exists a defect in the clause of attestation, in order that it may be supplied by the Affidavit of an attesting Witness.

“Is there an appointment of Executors? and if so, is it express, or implied according to the tenor? In either case, is it general or limited? It may be the latter in respect to property, time, country, very commonly one or the other; and there are frequently Codicils altering appointments made in testamentary papers of earlier date, or revoking previous instruments in whole or in part.

“Again, the Executors may be, and not unfrequently are, dead, or they desire to renounce, or they decline to act, or are far away and have no Agent in this Country duly authorized, or their residence is unknown. What is to be done in their absence? Then arises the question as to the appointment of the residuary Legatee. Is there one or more? for life or absolute? contingent or substituted? how and where? Willing to act? under what limitations entitled to the Grant of Administration with the Will annexed? Or it may be that only a Copy of the Will (executed abroad) has been received. The necessity for a new limitation then arises. Or there is no residuary Legatee named, or he is dead, or absent, or a minor, or the appointment is limited, contingent with a substitution. And in the course of the Will (which must be examined

throughout) there may be found to occur occasionally interpolated sheets, more frequently, indeed, very commonly, erasures, interlineations and alterations of various kinds. One among many that might be specified, is found in the attempt frequently made by Testators to defeat the provisions of the Act, by obliterating parts of the Will without the formalities prescribed by the statute, and which must be accounted for. It often happens in like manner, that in the Will reference is made to Schedules, intended Codicils, &c. which must be the subject of further inquiry.

"The clearing away of prior rights is often a matter of very serious difficulty, especially as in the case of *de bonis grants*, or grants of Administration of property left unadministered by deceased Administrators.

"There arise also questions as to the law of other Countries, and the rights of parties dependent upon it, whether in relation to domicile and the validity of the instrument, or the distribution of the property according to its tenor."

"Questions also arise as to the *retractations* of renunciations and survivorship, and the unascertained fact as to the latter. Again as to the Wills of married women made under powers and their limitations, whether a general grant, or a limited Probate or Administration with the Will annexed is to be granted.

"These and other questions are objects of the Proctor's care and inquiry in the first instance, that as far as possible the requisite explanations and proofs by Affidavit may be provided.

"The whole then goes before the principal Clerk of the Seat in the Registry, who must satisfy himself that nothing has escaped the Proctor's attention."

"To this cursory sketch in relation to Wills, should be added what appertains to the Estates of intestates, which again branch out into an almost infinite variety of cases, and in addition, questions arise as to the rights of parties to Letters of Administration to the effects of persons deceased."

The importance of the business transacted by the Clerks of the Seats may be estimated from the fact that about £60,000,000 sterling pass yearly under the Grants prepared by them.

When the Probate or Administration is ready, it is transmitted to the Clerk of the Papers in whose depart-

ment an entry of it is made. It is then placed before the Registrar for signature, and having been signed by him, it is sent to the Seal Keeper to be sealed, and by him it is delivered to the Practitioner on his production of the receipt obtained from the Receiver, or Clerk of the Seat.

The Clerks of the Seats also enter a variety of notations on the Records of the Court in connection with revoked Grants, Cœterorum Grants, Double Probates, Second and Subsequent Grants, Probate of Codicils after Will has been proved, Renunciation of Executors to whom power has been reserved, and Alteration of Grants. They have also duties in connection with Irish Grants and Scotch Confirmations.

By Sect. 12 of 21 and 22 Vic, cap. 56, it is enacted that any Confirmation sealed by the Court of Probate shall have the like force and effect in England, as if a Probate or Letters of Administration had been granted by the said Court of Probate.

It is required for this purpose that there be lodged with the Receiver the Confirmation and a copy on paper, and an official copy of the Interlocutor, and the following fees:—

Receipt, 1s.; Collating Copy Confirmation, 3d. per folio; Search Fee according to the number of years to be searched; Sealing Fee, £1 1s.; Filing copy Confirmation, 2s. 6d.; Filing copy Interlocutor, 2s. 6d.

If the Receiver finds the papers correct, he passes them on to the Clerk of the Seat, who makes the necessary search for any previous Grant in the same Estate; and if none is found, the Confirmation is forwarded to the Registrar for his signature, and thence to the Sealer, where it may generally be found three or four days after being left with the Receiver.

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## CLERK OF THE PAPERS.

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THE preliminaries of all Probate Court business are transacted in the Department of the Clerk of the Papers. All pleadings and papers in Causes, Petitions and Motions of whatever nature are filed there. Summonses are issued, and orders obtained there. Citations of all kinds, and



Subpœnas to bring in Wills or Testamentary Papers are also issued by the Clerk of the Papers, and all appearances to Citations, Subpœnas, Warnings and Summonses are entered in the Appearance Book kept in his Department.

Subpœnas for Witnesses, Attachments and similar Instruments are also issued from this Department.

Forms of Orders for assignment of Guardian—for filing Wills on renunciation of Executors—for issuing Subpœnas to bring in Testamentary Papers—for Grants after discontinuance of Causes—for Grant when the party has been cited to accept the Grant—for notation of domicile—for alteration or revocation of Grants—for founding jurisdiction of County Courts, and for other purposes are obtained from this Department.

Wills from the Lunacy Office, and also Wills brought in for safe custody on renunciation of Executors, are brought into this Department, and then transmitted to the Record Keepers. Wills or Testamentary Papers brought in on Subpœna are also deposited there. Draft Citations and Questions for the Jury are brought to the Clerk of the Papers for settlement by the Registrar. Bills of Costs for taxation are also filed in this Department, and appointments to tax are sent therefrom.

All Probates and Administrations that pass under the Seal of the Court, are entered in this Department, and the Clerk of the Papers has the custody of all Orders and Minutes connected with the proceedings of the Court, and the preparation and custody of many books connected therewith.

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## CALENDAR KEEPER.

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WHEN a person wishes to see a Will that has been proved in the Principal Registry, or an Administration Act, the first proceeding is to obtain a 1s. Probate fee stamp from a stationer, and take such stamp to the Record Keeper's department in the Principal Registry, and there obtain a ticket. This must be taken to the Calendar Keeper, by whom the Calendar is handed to the party; and after the entry of the Will or Administration has been found, the ticket is marked with the reference. The party is then referred to the Officer by whom the Original Will, or

engrossed copy, or Act of Administration will be produced. An Original Will will be shown in the Reading Room, and must not be taken out of that room, but when done with must be returned to the Clerk in that room.

The Calendar Keeper makes entry of the name and number of searches, he also enters in a written Calendar all Grants in the principal Registry. This Calendar is used by the public until the printed Calendar is completed for the year. He reads Wills to the public if required, and takes orders for, and prepares Exemplifications of Probate or Administration, and receives the fees for the same. He takes orders for, and prepares engrossments for Debonis Grants, double Probates, and all second Grants, and receives fees on account of the same; enters Notations in the printed Calendar of all Debonis, second Grants, &c. also of increase or decrease in amount of effects, and enters the folio of each Will as it is registered in the printed Calendar for reference.

#### FEES FOR SEARCHES AND INSPECTION OF WILLS, ETC.

For every search for Will or Grant of Letters of Administration or any document filed in the Principal Registry, including the looking up and inspecting an original Will before the same is registered, or a registered copy of a Will or an Administration Act ... ..	0	1	0
For every third Will or Administration Act looked up in addition to the above ... ..	0	1	0
For looking up and inspecting an original Will after the same is registered in addition to the fee for the search ... ..	0	1	0
For looking up and producing any document filed in the Registry other than an original Will or Administration Act ... ..	0	1	0
For a search for a Will or Grant of Letters of Administration, and for reading the Will when the party applying is unable or unwilling to search for or read the same :			
For the search for each year or part of a year ...	0	0	6
For reading the Will :			
If twenty folios of ninety words, each or under	0	1	0
For every additional twenty folios or part of twenty folios of ninety words each ... ..	0	1	0

## RECEIVER.

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WHEN a Practitioner requires Probate of a Will, he must take the Oath, Affidavit for the Inland Revenue, the Will, the engrossment of the Will, the stamped blank form of Probate, and such other Affidavits and documents as shall have been required and made to the department of the Receiver at the Principal Registry. That officer gives a receipt for the papers, for which he takes a fee stamp of 1s., and the papers are then handed by him to the Examiner of Engrossments.

The Receiver also takes the papers connected with the Sealing of Irish and Scotch Grants.

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## EXAMINERS OF ENGROSSMENTS.

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AFTER a Will, Engrossment and Papers connected therewith have been received by the Receiver, they are handed by that officer to an Examiner, by whom the Engrossment of the Will is collated with the Original, and on being found correct, the Engrossment and all the other documents are returned by him to the Receiver, who then forwards them to the Clerk of the Seat for him to prepare the Probate or Letters of Administration with Will annexed. The Grant when completed, is forwarded by the Clerk of the Seat to the Clerk of the Papers, and after being entered in his department, is forwarded to the Registrar for signature, and when signed, is sent to the Sealer.

## SEALER.

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THE Sealer takes an account of all instruments requiring to be sealed with the Seal of the Court when brought to him for that purpose, and having done so, seals them. After affixing the Seal to Probates and Letters of Administration, he delivers them to the person producing and leaving with him the original receipt given for the Papers.

He also seals Exemplifications, Probate Court Citations, Subpœnas, Attachments, Writs of Sequestration, Commissions, Irish Grants, Scotch Confirmations, Office Copies to which the Seal is required, Orders, Divorce Citations, Subpœnas, Attachments, Petitions and Decrees.

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## CORRESPONDENCE DEPARTMENT.

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THE duties of this Department are more diversified than its name denotes. By section 49 of the Probate Act 1857, whenever application for a Grant of Probate or Administration is made in a District Registry, notice of such application is to be sent to the Principal Registry. These Notices are received by this Department, and if the deceased has not been dead more than two years, search is made by one of the Clerks of the Department, and if no Grant is found to have been made in respect of the Goods of the deceased, a certificate to that effect is sent to the District Registrar. Every such notice is carefully examined, and where the application appears to be incorrect, it is referred to a Registrar. Under the Act the District Registrars are required to report all their difficulties to the Principal Registry for solution. This is carried out by means of the Correspondence Department. A copy of every Caveat entered in the Principal Registry is made and forwarded by this Department to the District Registry within the juris-

diction of which the deceased had a residence at the time of his death, so also a copy of every Caveat entered in a District Registry is forwarded to the Principal Registry, and is entered by this Department in the Caveat Book kept in the Principal Registry.

An Alphabetical List of all applications for Grants is also kept for the use of the Searching Department.

When a Caveat has been warned, and no appearance entered, an Affidavit is filed of that fact, and if the Grant is to be made in the District Registry, such Affidavit must be taken to the Correspondence Department, from which the necessary directions to the District Registrar will issue.

The Office is at Nos. 12 and 13, Great Knight Rider Street, Doctors' Commons.

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## PERSONAL APPLICATIONS DEPARTMENT.

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THE Personal Applications Department is to enable persons to obtain Probate or Letters of Administration without professional assistance.

Persons wishing to obtain Grants of Probate or Letters of Administration without the intervention of a Proctor, Solicitor, or Attorney, must apply in person at this Department, and not by letter. (A)

No application will be received through an agent of any kind, whether paid or unpaid. (B)

The application of parties who are attended by a person acting or appearing to act as their adviser in the matter, will not be entertained. (C)

The Office is at Nos. 12 and 13, Great Knight Rider Street, Doctors' Commons.

## LITERARY DEPARTMENT.

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1. Application is to be made by letter directed to the Judge at "The Principal Registry, Her Majesty's Court of Probate, London," with "Department for Literary Inquiry" in the corner of the envelope.

2. The applicant is to state his name, address, profession or description, the object of research, and the period during which he proposes to attend. If considered necessary, he may be called upon for further explanation, or a reference.

3. A card signed by the Judge will give the applicant free admission for literary purposes during the time specified therein, subject to the requirements of Regulation No. 5. This privilege will be liable to forfeiture for any breach of the rules or regulations, or any injury to, or want of care in the use of, the Books or Documents.

4. The Department for Literary Inquiry will open at 10 A.M. and close at 3.30 P.M., except between the 10th of August and the 24th of October, when the hours will be from 11 A.M. until 2.30 P.M. On Saturdays and holidays the Department will be closed.

5. Every visitor will be required to sign his name in a book on each attendance, and for the present only three persons can be admitted at one time.

6. The visitor will be allowed without fee to search the Calendars, to read the registered copies of Wills proved before the year 1700, the Probate and Administration Act Books to the same date, and to make extracts from such Wills and Books.

7. He will not be allowed to trace or take an impression from the writing of any book or document in the Registry, or to use ink in making extracts.

8. No more than two volumes can be produced for one reader at the same time.

9. The Superintendent of the Department will arrange the days for the attendance of those who are entitled to admission, and, as far as possible, give facility for each person who has commenced a search and inquiry, to complete the same without interruption.

## DEPOSITORY FOR WILLS OF LIVING PERSONS.

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### INSTRUCTIONS TO DEPOSITORS.

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IN pursuance of the provisions of the Court of Probate Act 1857 (20 & 21 Vic., Ch. 77, Sec. 91), the Principal Registry of the Court of Probate, 6, Great Knight Rider Street, Doctors' Commons, London, has been provided as a depository for the Wills of living persons, and Testators are at liberty to deposit their Wills or Codicils to such Wills therein, under the following regulations :

The Will or Codicil to be deposited must be enclosed in a sealed Envelope and delivered to one of the Registrars of the Court at the Principal Registry, either by the Testator himself, or by some person specially authorized by him to deposit the same on his behalf.

The Will or Codicil so deposited will not be delivered up to any person, but must remain in the Registry until after the Testator's death.

In case the Testator himself deposits his Will or Codicil, he will be required to sign his name, in the presence of the Registrar, to an endorsement on the Envelope in which the Will or Codicil is enclosed, to the following effect :—

“This Sealed Packet contains the Last Will and Testament, or Codicil to the Last Will and Testament, or Last Will and Testament and Codicil thereto, bearing date respectively, (Here state the dates of all the papers enclosed, of A.B., of, &c., whereof C.D., of &c., and E.F., of, &c., are appointed Executors, and the same are brought into the Principal Registry of Her Majesty's Court of Probate by me for safe custody, there to remain deposited until after my decease.” *The residences of the Testator and of the Executors should be set forth in this endorsement, and also the date of signature.*

In case the Testator authorizes some other person to deposit his Will or Codicil for him, he will be required to subscribe his name, in presence of an attesting witness, to an endorsement on the Envelope in which the Will or Codicil is enclosed, to the following effect :—

"This Sealed Packet contains the Last Will and Testament, or Codicil to the Last Will and Testament, or Last Will and Testament and Codicil thereto, of me, A.B., of, &c., whereof C.D., of, &c., and E.F., of, &c., are appointed Executors, and I authorize G.H. to deposit the same for safe custody in the Principal Registry of Her Majesty's Court of Probate, there to remain deposited until after my decease." (Signed) A.B. Witness, K.L. *The Residences of the Testator and of the Executors, and the date of Signature, should be set forth in this endorsement.*

The Packet containing the Will or Codicil must be accompanied by an Affidavit from the attesting witness, to the effect that the signature of the Testator to the above endorsement, witnessed by the Deponent, is in the proper handwriting of such Testator, and was by him signed in the Deponent's presence on the day mentioned in the endorsement, and that the signature K.L. is in the proper handwriting of the Deponent. An Affidavit will also be required from the person authorized to deposit the Packet, to the effect that the Sealed Packet produced for the purpose of being deposited for safe custody in the Principal Registry of Her Majesty's Court of Probate and on the back of which the Deponent has signed his name, is at the time of making the Affidavit precisely in the same state, plight, and condition, as when received by the Deponent from the hands of A.B., [the Testator,] on a day to be mentioned as that on which he received it.

The last-mentioned Affidavit is to be sworn before the Registrar to whom the Packet, containing the Will or Codicil is delivered.

A Minute or Order will be drawn up by the Registrar setting forth the production of the Packet containing the Will or Codicil, and the Affidavits (if any), and when and by whom the same were produced, and the Registrar's order that the same be deposited in the Principal Registry for safe custody.

The following Fees will be payable in Probate Court Stamps :—

	£	s.	d.
For depositing the Will and receipt for same	1	1	0
For drawing and entering Minute of the Registrar ... ..	0	2	6
For filing each Affidavit ... ..	0	2	6



Envelopes for Wills and Codicils, with the necessary endorsements and forms of Affidavits, are to be had on application to the Record Keepers at the Principal Registry.

Testators are at liberty to transmit their Wills and Codicils to the Principal Registry, to be deposited there for safe custody, through a District Registrar of the Court of Probate, who will send the same by the General Post in a Registered Letter.

The Affidavit of the person authorized by the Testator to deposit his Will or Codicil, will, in that case, be sworn before the District Registrar, to whom the packet containing them is delivered.

On production to the District Registrar of the Sealed Packet containing the Will or Codicils to be deposited, and the Affidavits (if any), he will draw up a Certificate under his hand, setting forth when and by whom the same were produced to, and left with him, and file this Certificate in his District Registry, and he will transmit an Office Copy of the Certificate, with the Sealed Packet and Affidavits, and Form of Receipt, to the Principal Registry. The Receipt will be returned to him under the hand of one of the Registrars of the Principal Registry.

The following Fees will be payable to the District Registrar in addition to the Fees before mentioned:—

	£	s.	d.
For his Certificate ... ..	0	2	6
For filing same ... ..	0	2	6
For Office Copy to transmit with Will or Codicil... ..	0	2	6
For Receipt ... ..	0	1	0

## DIVORCE AND MATRIMONIAL REGISTRY.

IN this Registry, or Department of the Principal Registry the papers connected with Divorce and Matrimonial Causes are deposited, and all steps are taken preparatory to the Causes and Motions being heard in Court in the same manner as in the Principal Registry, but subject to the rules made in respect of such business.

It is also in this department that proceedings are taken under the "Legitimacy Declaration Act."

The Registry is at Nos. 12 and 13, Great Knight Rider Street, Doctors' Commons.

## ADMIRALTY REGISTRY.

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IN this Registry are deposited the papers connected with the High Court of Admiralty. There, Accounts are investigated and reported on by the Registrar and Merchants, Motions, Summonses, and References to the Registrar are disposed of, Bills are taxed, and Instruments such as Warrants of Arrest, Bail Bonds, Affidavits of Justification, Releases, Subpœnas, and other Instruments are prepared.

The proceedings in the Admiralty Court and Registry appear to be set out with great minuteness in the New Edition of "The Practice of the High Court of Admiralty," by H. C. Coote, Esq. This work and the ample "Digest of the Law, and Practice of the High Court of Admiralty," by Messrs. Pritchard, cannot fail to make the public acquainted with the Practice in Admiralty Business.

The Admiralty Registry is at No. 12, Godliman Street, Doctors' Commons.

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## ARCHES REGISTRY.

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THIS is the Registry of the Arches Court of the Archbishop of Canterbury, and records papers and issues Citations and other instruments with reference to the proceedings of that Court.

The Registry is at No. 3, Godliman Street, Doctors' Commons.

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## CONSISTORY REGISTRY.

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THE Consistory Registry is the Registry of the Consistory Court of the Bishop of London. In it Marriage Licences are granted, and Faculties for the Consecration and alteration of Churches and Burial Grounds, &c.; Marriages of British subjects or other persons, performed abroad under the sanction of the British Minister by a Clergyman of the

Church of England licensed by the Bishop of London, or acting under the sanction of such British Minister; baptisms of Children of British subjects or other persons performed in like manner; and Burials of persons in British burial grounds abroad are Registered here.

The Bishop of London holds a Visitation of his Clergy once in four years, and the Citations are issued from this Registry.

The Registry is at No. 3, Godliman Street, Doctors' Commons.

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## APPEALS REGISTRY.

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THIS is the Registry of Her Majesty's Court of Appeals in Ecclesiastical and Maritime Causes. It issues Inhibitions, Citations, Monitions, Relaxations, Remissions, Attachments, Sequestrations, and other documents in connection with the proceedings in the Court of Appeals; and rule 33 directs that, "All instruments already issued or hereafter to be issued, and which are made returnable before the Judicial Committee or before a Surrogate of the Judicial Committee may be returned into the Registry."

The Registry is at No. 12, Godliman Street, Doctors' Commons.

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## SURREY REGISTRY.

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THE Surrey Registry is the Registry of the Commissary Court of Surrey, which exercises the jurisdiction of the Bishop of Winchester, in the County of Surrey, in respect of Consecrations of Churches and Burial Grounds, Visitations of Clergy, and admission of Churchwardens. It grants Faculties for pulling down and rebuilding Churches, making alterations in Churches, setting up Monuments and removing Bodies and grants Marriage Licences. &c.

The Court is held in the Ladye Chapel, St. Savionr's, Southwark.

The Registry is at No. 10, Great Knight Rider Street, Doctors' Commons.

## REGISTRY OF THE ARCHDEACONRY OF SURREY.

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THIS Archdeaconry comprehends nearly 300 Parishes, Chapels, &c., and they are divided into four Districts, namely: Southwark, Ewell, Stoke, and Reigate, over the whole of which the Archdeacon has jurisdiction as Ordinary.

The Court is held in the Ladye Chapel, St. Saviour's, Southwark.

The Archdeaconry Court consists of the Official or Judge (who is the substitute for the Archdeacon when not personally present,) the Registrar, Deputy Registrar, Record and Seal Keeper, Assistant Clerks and Apparitor. The office of the Judge is held for life by patent under the hand and seal of the Archdeacon. By the practice of the Ecclesiastical Courts, the presence of a Registrar or his Deputy is necessary whenever any Act is done by an Ecclesiastical Judge.

In the County of Surrey it is customary to hold two visitations in the year, at each of which the Churchwardens are requested to make presentments. By custom Churchwardens (usually two in number, one elected by the Clergyman and the other by the Parishioners) are chosen yearly in Easter week, and are admitted into office by the Ordinary at his visitation shortly afterwards. The Bishop of Winchester usually attends the Spring Visitation, and the Archdeacon of Surrey the Autumn Visitation.

The Archdeaconry of Surrey is divided into four districts or "Calls," for which Visitations are held in the principal towns of Guildford, Reigate, Kingston, and Southwark. The following is the mode in which the business of the Court is conducted. Shortly after Michaelmas in every year, Processes are issued by the Deputy Registrar, under the seal of the Archdeaconry, addressed to all Clerks and literate persons whomsoever in and throughout the Archdeaconry, appointing days for holding the Visitation in the respective parish Churches of the four above-named Towns, and directing them to cite the Clergy and Churchwardens to attend. These Processes are delivered to the Apparitor, who issues Citations accordingly, which are usually served by post.

Printed Articles of Inquiry (commonly called Presentment Papers) are prepared and forwarded by the Deputy Registrar, addressed to each of the Parishes or Districts within the Archdeaconry, and the Churchwardens fill up and sign their "presentments" ready for delivery at the Visitation.

At the day appointed for the Visitation, the practice is for the Churchwardens to attend the Registrar's Clerk at the Vestry or some other convenient place in the Town, at nine o'clock in the morning, and pay "Procurations and Synodals" due from the Clergy to the Archdeacon and office fees; they also produce for his inspection their Presentments, and he takes care that they are formally filled up, and Initials and returns them for presentment to the Judge. After this, at an appointed time in the forenoon, the Archdeacon and Official or his Surrogate take their accustomed seats in the Church, attended by the Deputy Registrar, and (prior to Divine Service) the Court is formally opened and the Churchwardens are called over in rotation by the Deputy Registrar, when they appear personally and deliver in their Presentment papers, which are inspected by the Judge and delivered by him to the Deputy Registrar to be filed. The Archdeacon puts such questions as he thinks fit to the Churchwardens, and the Deputy Registrar enters Minutes of the proceedings in the Visitation Book.

There is then Divine Service, and the Archdeacon delivers a "Charge." At the Easter Visitation (Commissary Court of Surrey) the routine is similar, excepting that the outgoing Churchwardens have delivered to them a Declaration of Office which they, and subsequently the Churchwardens elect, sign. These are acknowledged before the Judge and filed by the Registrar.

The Clergy of the Archdeaconry are inducted to their livings through the Registry of the Court, on the Bishop of Winchester issuing a mandate under his hand and seal to the Archdeacon.

The mode of Induction is as follows:—

The Clergyman to be Inducted gets some Clerical friend in the Archdeaconry to accompany him to the Church and deliver the Key of the Church into his hands in the presence of the Churchwardens, he then tolls the bell and locks the Church door.

The Induction is read aloud and a Certificate of what is done is endorsed on the Induction, and signed by all parties.

The Election of a Proctor for the Archdeaconry, to meet for the Clergy in Convocation, is also conducted through the Registry on the issuing of the Bishop's Mandate for that purpose. The following is the mode of Election:— A Citation issues and is served upon the Clergy, who upon the appointed day meet in the Court (the Ladye Chapel, Saint Saviour's), when their names are called and the Mandate is read. The Election then proceeds.

There are more than 100 questions to be answered in a Churchwarden's Presentment.

The Registry of the Archdeaconry of Surrey is at No. 5, Godliman Street, Doctors' Commons.

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## FACULTY OFFICE.

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THE Faculty Office is the Office of the Archbishop of Canterbury. It was established by Statute 25 Henry VIII. cap. 21. It grants Marriage Licences, Instruments for creating Notaries of *England, Wales* and the Colonies, dispensations to Clergymen to hold livings, qualifications of Chaplains, Degrees of D.D., B.D., &c. The Faculty Office has alone the right of granting Special Licences for Marriage. There is an Appeal to the Lord Chancellor.

The Faculty Office is at No. 10, Great Knight Rider Street, Doctors' Commons.

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## VICAR GENERAL'S OFFICE.

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IN the Vicar General's Office Marriage Licences are granted, Instruments are prepared on the institution of Clergymen to Livings and on the induction of Bishops, and it is the Record Office of the proceedings of Convocation.

The Vicar General's Office is in Wellington Chambers, Bell Yard, Doctors' Commons.

## OFFICE OF THE QUEEN'S PROCTOR

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THE Office of the Queen's Proctor may properly be ranked amongst the Public Offices in Doctors' Commons; the Queen's Proctor having public duties in connection with Probate and Divorce business.

The 75th Non-Contentious Rule of the Probate Court directs that, "In all cases where application is made for Letters of Administration either with or without Will annexed of the goods of a Bastard dying a Bachelor or a Spinster, or a Widower or Widow without issue, or of a person dying without known relation, notice of such application is to be given to Her Majesty's Procurator General, or in case the deceased died domiciled within the Duchy of Lancaster to the Solicitor for the Duchy in London, in order that he may determine whether he will intervene on the part of the Crown, and no Grant is to be issued until the Officer of the Crown has signified the course which he thinks proper to take." Rule 76 directs that, "In the case of persons dying intestate without any known relation a Citation must be issued against the next of kin (if any) and all persons having or pretending to have any interest in the personal estate of the deceased, and the service thereof upon them shall be effected as required by Rule 70; such Citation must also be served upon the Queen's Proctor or upon the Solicitor for the Duchy of Lancaster as the case may require."

The Queen's Proctor may also, upon leave being obtained intervene in suits in the Divorce Court. Rule 68 states that, "the Queen's Proctor shall within 14 days after he has obtained leave to intervene in any Cause, enter an appearance and plead to the petition, and on the day he files his Plea in the Registry, shall deliver a copy thereof to the Petitioner or to his Proctor, Solicitor, or Attorney."

Rule 69—"All subsequent pleadings and proceedings in respect to the Queen's Proctor's intervention in a Cause, shall be filed and carried on in the same manner as before directed, in respect of the pleadings and proceedings of the original parties to the Cause."

The Office of the Queen's Proctor is at No. 5, Dean's Court, Doctors' Commons.

## OFFICE OF THE MARSHAL AND SERJEANT-AT-MACE OF THE HIGH COURT OF ADMIRALTY.

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It is the duty of the Marshal of the High Court of Admiralty to attend the Judge of that Court with the Silver Oar (the ancient emblem of his Maritime Jurisdiction) during the sitting of the Court.

The duties of this Officer are analogous to those of the Sheriff of a County: to execute Warrants and Attachments of the Court—this duty was formerly limited to the Port of London, but by the Rules and Regulations issued pursuant to an Order in Council, on the 1st of January, 1860, the duties of the Marshal are now extended, and he has to execute the Orders of the Court at all Outports in the kingdom within its jurisdiction.—To enable him to perform these duties at the Outports he has, with the authority of the Lords of the Treasury and the Commissioners of the Board of Customs, appointed the Collectors of the Customs at the various Ports to act as his substitutes.

Warrants executed by the Marshal are sometimes for the Arrest of Persons, but more usually for the Arrest of Ships, Goods or Freight; these Warrants require to be promptly executed, especially when Ships are ready to proceed to sea, and it is necessary for the Marshal to have Officers under his control in different places to whom he can intrust the execution of the same.

The Marshal has the custody of Ships and Goods when arrested by him, for the safety of which it is requisite that he should have careful ship-keepers in his employ or at his command.

His duty in executing decrees of the Court relative to the unlivery of the Cargoes and the removal of Ships and Cargoes from one port to another, and the Appraisement and Sale of Ships or Goods are attended with great responsibility. It is the duty of this Officer to inquire into the sufficiency of persons proposed as Sureties in this Court and to Certify in respect thereto.



During hostilities the duties of the Marshal are greatly increased; during the Russian War, 1854, he had the care and custody of all Vessels and Goods captured and brought into any of the ports of the United Kingdom of *Great Britain* and *Ireland*, and the sale of such ships and cargoes as were condemned, the proceeds whereof he paid into the Account of Her Majesty's Paymaster General, at the Bank of England.

The Office of the Marshal is at No. 3, Paul's Bakehouse Court, Doctors' Commons.

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## DISTRICT REGISTRIES.

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ATTACHED to and under the control of Her Majesty's Court of Probate are 40 District Registries, situate in various parts of *England*, according to a Schedule annexed to the Probate Act of 1857, and hereafter recited. Sec. 13 of that Act enacts that, "There shall be established for each of the Districts specified in Schedule (A) to this Act, and at the places respectively mentioned in such Schedule a Public Registry attached to and under the control of the Court of Probate hereafter referred to as 'The District Registry.'"

The 46th sec. enacts that, "Probate of a Will or Letters of Administration may, upon application for that purpose to the District Registry, be granted in common form by the District Registrar in the name of the Court of Probate and under the Seal appointed to be used in such District Registry; if it shall appear by Affidavit of the person or some or one of the persons applying for the same that the Testator or Intestate, as the case may be at the time of his death, had a fixed place of abode within the District in which the application is made, such place of abode being stated in the Affidavit, and such Probate or Letters of Administration shall have effect over the Personal Estate of the deceased in all parts of *England* accordingly."

The 48th sect. enacts that, "The District Registrar shall not grant Probate or Administration in any case in which there is contention as to the grant until such contention is terminated or disposed of by Decree or otherwise, or in which it otherwise appears to him that Probate or Administration ought not to be granted in common form." Sect. 59 enacts that, "It shall not be obligatory on any person to apply for Probate or Administration to any District Registry or through any County Court, but in every such case such application may be made through the Principal Registry of the Court of Probate, wherever the Testator or Intestate may at the time of his death have had his fixed place of abode, &c.

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## SCHEDULE (A.)

DISTRICTS and PLACES of DISTRICT REGISTRIES throughout  
ENGLAND and WALES.

Districts.	Places of District Registries.
1 County of Northumberland ( <i>a</i> )	Newcastle-on-Tyne
2 County of Durham	Durham.
3 Counties of Cumberland & Westmorland	Carlisle.
4 West Riding of the County of York	Wakefield.
North Riding ditto	York.
5 East Riding ditto ( <i>b</i> ) including the City of York and Ainsty	
6 County of Lancaster, except the Hun- dred of Salford and West Derby and the City of Manchester - - -	
7 City of Manchester & Hundred of Salford	Lancaster.
8 Hundred of West Derby in Lancashire	Manchester.
9 County of Chester ( <i>c</i> )	Liverpool.
10 Counties of Carnarvon and Anglesea	Chester.
11 Counties of Flint, Denbigh, & Merioneth	Bangor.
12 County of Derby	St. Asaph.
13 County of Nottingham ( <i>d</i> ) - - -	Derby.
14 Counties of Leicester and Rutland	Nottingham.
15 County of Lincoln ( <i>e</i> )	Leicester.
16 Counties of Salop and Montgomery	Lincoln.
17 Northern Division of Northampton, and Counties of Huntingdon and Cam- bridge ( <i>f</i> ) - - -	Shrewsbury.
18 County of Norfolk ( <i>g</i> )	Peterborough.
19 Eastern Division of the County of Suf- folk and North Division of the County of Essex	Norwich.
20 Western Division of the County of Suffolk	Ipswich.
21 County of Bedford and Southern Divi- sion of Northamptonshire ( <i>h</i> ) - -	Bury St. Edmunds.
22 County of Warwick ( <i>i</i> )	Northampton.
23 County of Stafford ( <i>k</i> ) - - -	Birmingham.
24 Counties of Radnor, Brecknock, and Hereford - - -	Lichfield.
	Hereford.

(*a*) Including Towns & Counties of Newcastle-on-Tyne & Berwick-upon-Tweed.(*b*) Including the Town and County of Kingston-on-Hull.(*c*) Including the City of Chester.(*d*) Including the Town of Nottingham.(*e*) Including the City of Lincoln.(*f*) Including the University of Cambridge.(*g*) Including the City of Norwich.(*h*) Including the Town of Northampton.(*i*) Including the City of Coventry.(*k*) Including the City of Lichfield.

SCHEDULE (A.)—*continued.*

Districts.	Places of District Registries.
25 Counties of Cardigan, Carmarthen ( <i>l</i> ), and Pembroke ( <i>m</i> ) with the Deaneries of East and West Gower in the County of Glamorgan	Carmarthen.
26 Counties of Glamorgan (with the Exception of the Deaneries of East and West Gower) and Monmouth -	Llandaff.
27 County of Worcester ( <i>n</i> )	Worcester.
28 County of Gloucester ( <i>o</i> ), except the present Bristol County Court District	Gloucester.
29 Bristol and Bath present County Court Districts	Bristol.
30 Counties of Oxford ( <i>p</i> ), Berks, Bucks	Oxford.
31 Eastern Division of the County of Somerset, except the present Bath County Court District, and the Part in Somersetshire of the present Bristol County Court District -	Wells.
32 Western Division of the County of Somerset	Taunton.
33 County of Devon ( <i>q</i> )	Exeter.
34 County of Cornwall	Bodmin.
35 County of Wilts -	Salisbury.
36 County of Dorset ( <i>r</i> )	Blandford.
37 County of Hants ( <i>s</i> )	Winchester.
38 Eastern Division of the County of Sussex ( <i>t</i> ) -	Lewes.
39 Western Division of the County of Sussex	Chichester.
40 Eastern Division of the County of Kent ( <i>u</i> )	Canterbury.

The Divisions of Counties referred to in the Schedule are the Divisions of the same Counties described for Election Purposes in the Act of the Second and Third Years of King William the Fourth Chapter Sixty-four, and the Cities and Towns herein referred to are to be taken to include the Counties of such Cities and Towns as are Counties of themselves.

(*l*) Including the Town of Carmarthen.

(*m*) Including the Town of Haverfordwest.

(*n*) Including the City of Worcester.

(*o*) Including the City of Gloucester.

(*p*) Including the University of Oxford.

(*q*) Including the City of Exeter.

(*r*) Including the Town of Poole.

(*s*) Including the Town of Southampton and Isle of Wight.

(*t*) Including such of the Cinque Ports and their Dependencies as are locally situate in the County of Sussex.

(*u*) Including the City of Canterbury and such of the Cinque Ports and their Dependencies as are locally situate in the County of Kent.

# PART V.

## A TREATISE ON

# PROBATE COURT BUSINESS.

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### CHAPTER I.

### OF BRINGING WILLS OF DECEASED PERSONS INTO THE PRINCIPAL REGISTRY.

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FOR Grants in Common Form—By Subpœna—On Motion—On Renunciation—From Lunacy Office—On issuing Citation to accept or refuse Probate, &c.—With Affidavit of Scripts—From the District Registries—With Affidavit when the Will or Testamentary Paper has not been properly executed.

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Having spoken of the Courts lately and at present connected with Doctors' Commons, of the Registries therein, and of the most public departments of the Principal Registry, Probate Court Business will now be treated of.

All the Business of Granting Probates and Letters of Administration may, in one sense, be said to be Probate Court Business, as it is all transacted under the Authority of the Probate Court; but the largest portion of it does not come before the Court itself, but is transacted in the different Registries and has obtained the name of "Common Form" or "Non-Contentious Business."

Probate Court  
Business  
defined.

By the term "Probate Court Business," is chiefly meant that Business which comes before the Judge in the shape of Summonses, Motions, Petitions, and Causes. This is called, when speaking of Causes, "Contentious Business."

As the Court Business includes certain matters which, though moved in Court are not contested, it is obvious that "Contentious Business" does not adequately describe Court Business, and the term "Common Form Business" includes in it more than "Non-Contentious Court Business."

The Non-Contentious Business of the Court consists prin-

Non-Contentious  
Business.

cipally of Exparte Motions, comprising questions of difficulty arising in uncontested cases, and decreeing Grants in Cases in which parties have been Cited to accept or refuse and have not appeared.

Contentious  
Business.

The Contentious Business is generally confined to Causes in which there are opposing or contending parties, but the appearance of an opposing party is not always essential to constitute it, for there may be Contentious proceedings in Default of Appearance. Thus, when a party is cited to see a Will proved in solemn form of law it is optional with him to appear or not, but the proceedings are nevertheless of a contentious nature, although he be absent.

Non-Contentious Business as defined by the "Court of Probate Act, 1857," includes all Common Form business and the Warning of Caveats.

Rule 3, in Contentious Business states that, "All proceedings in the Court of Probate or in the Registries thereof, in respect of business not included in the Court of Probate Act, 1857, under the expression 'Common Form Business,' except the Warning of Caveats, shall be deemed to be Contentious Business." Sect. 2 of the above Act declares that "Common Form Business" shall mean the business of obtaining Probate and Administration where there is no contention as to the right thereto, including the passing of Probates and Administrations, through the Court of Probate in Contentious Cases when the contest is terminated, and all business of a non-contentious nature to be taken in the Court in matters of testacy and intestacy, not being proceedings in any suit, and also the business of lodging Caveats against the grant of Probate or Administration."

Summonses, Motions, Petitions and Causes will now be chiefly spoken of, but there are other things that partake of the nature of Court Business, for instance, Subpœnas to bring in Wills and Registrars' Orders.

Registrars'  
power to  
transact Court  
Business.

The Registrars have power to issue Subpœnas, hear Motions, grant Summonses, and make many Orders of a Judicial nature. They do not exercise this power merely as Registrars, for the Registrars of the Prerogative Court had no such power, but the Registrars of the Probate Court, in addition to their power as Registrars, have certain powers conferred on them by 21 & 22 Vic., cap. 95, sec. 24, which enables them to exercise the same power and authority which Surrogates of the Judge of the Prerogative

Court of Canterbury were invested with before the passing of the Court of Probate Act. The Rules of Court also show that in many cases they act as substitutes for the Court, and in that capacity transact what is essentially "Probate Court Business."

A Will is the very foundation of Testamentary or Probate Business, consequently the Will and the means of obtaining it become the first objects of inquiry. The various ways in which Wills are brought into the Principal Registry are therefore prominently mentioned.

A Will, the foundation of Testamentary Business.

Wills are brought into the Principal Registry in at least nine different ways. Thus they are brought in for Probate in Common form; on Subpœna, against any persons who may happen to hold them; with Motion Papers, in order to move the Court concerning them; with the Renunciation of the Executors; from the Lunacy Office; on issuing Citations against parties to accept or refuse Probate or Letters of Administration with Will annexed; with Affidavits of Scripts in Causes. Wills are also sent up to the Principal Registry from District Registries, and there are Wills, so called, deposited in the Registry, of which Probate has been refused in consequence of informal execution.

Wills brought in in different ways.

These different modes of bringing in Wills will now be briefly explained.

Will brought in for Grant in Common form taken to Personal Applications Department or Receiver.

## WILLS BROUGHT IN FOR GRANT IN COMMON FORM.

Wills brought in for Probate or Administration with the Will annexed are taken to the Personal Applications Department, if the parties intend to extract the Grant through that Department, but if the Grant be obtained by a Practitioner the Will is taken with the other papers already spoken of to the Receiver.

## WILLS OR TESTAMENTARY PAPERS BROUGHT IN ON SUBPœNA.

THE 23rd sect. of the Probate Act of 1858, enacts that, "It shall be lawful for a Registrar of the Principal Registry of the Court of Probate, and whether any Suit or other proceeding shall or shall not be pending in the said Court, to issue a Subpœna requiring any person to produce and bring into the Principal or any District Registry, or otherwise, as in the said Subpœna may be directed, any paper

Wills, &c., brought in on Subpœna.

or writing being or purporting to be testamentary, which may be shown to be in the possession, within the power, or under the control of such person; and such person, upon being duly served with the said Subpœna, shall be bound to produce and bring in such paper or writing, and shall be subject to the like Process of Contempt in case of Default as if he had been a party to a suit in the said Court, and had been ordered by the Judge of the Court of Probate to produce and bring in such paper or writing."

Though there is practically very little difference between the mode of bringing in a Will, whether a suit be or be not pending, it will be convenient to make a distinction and speak first of bringing in a Will when no suit is pending.

For the sake of brevity the word "Will" only is used, but the Reader will understand that it is intended to include Codicils and generally all Papers which are Testamentary.

Subpœna when  
no Suit is  
pending.

Any person may be required to bring a Will or Testamentary Paper into the Principal or a District Registry, provided it be shown to be in his possession, or power, or under his control.

When Will can-  
not be brought  
in without  
Subpœna.

It sometimes happens that an Executor holds a Will and is perfectly willing to bring it into the Registry, but he will not renounce. It sometimes also happens that a person other than the Executor holds a Will who is willing to bring it into the Registry, but will not hand it over to the Executor or other applicants for it. In these cases the only alternative is for the party to retain possession of the Will until a Subpœna issues against him, as Wills of deceased persons are not received into the Registry merely to relieve persons from their custody.

Affidavit re-  
quired.

The mode of showing that a Will is in the possession of a party is by Affidavit. It is not the practice to require the Interest of the party issuing the Subpœna to be stated. It may be by or against an Executor, or one Executor against another; but the Affidavit must describe the Paper and state the name and residence of the deceased, and that the Will is in the possession, within the power, or under the control of the person or persons against whom the Subpœna is to issue. If the date of the Will or Paper be known it should be stated, if it be not known the words should be inserted, "the date whereof is not known."

Affidavit must  
be satisfactory.

If this Affidavit be satisfactory the Registrar will grant an Order for the Subpœna to issue. A printed form of



order may be obtained from the Clerk of the Papers. A printed form of Subpœna called "Subpœna in a proceeding in Common form to bring in a Script," may be obtained from a Stationer.

A Præcipe is required to lead the Subpœna, a printed form of which may also be obtained from a Stationer. All these papers are taken to the Clerk of the Papers, who receives the fees and forwards the papers to the Registrar, by whom the Order and Subpœna are signed. The Affidavit, Order, and Præcipe are then filed by the Clerk of the Papers and the Subpœna is handed to the Sealer who, having attached the Seal, returns it to the Practitioner. The fees are 5s. for the Subpœna; 2s. 6d. for the Affidavit; and 2s. 6d. for the Order. The Fees are not placed on the Documents, but are given either in one or several Stamps to the Clerk of the Papers.

Præcipe required.

Order and Subpœna to be signed by Registrar.

Subpœna to be sealed.

Fees.

Subpœnas are served personally; the mode of service is by showing the original if required and leaving a copy with the party.

Service of Subpœna.

Rules 13 to 22 in Contentious Business, apply to Citations, and Rule 21 directs "The above Rules, so far as they relate to the service of Citations, are to apply to the service of all other Instruments requiring personal service."

An Endorsement of the service as in the case of a Citation had better be placed thereon, in case it be necessary to issue an Attachment against the party served for not bringing in the Will.

Endorsement.

The Subpœna after service need not be filed, except for the purpose of obtaining an Attachment.

When a Cause is pending it sometimes happens that Scripts or Testamentary Papers are in the hands of persons who will not deliver them to the parties in the suit for use therein. If the Affidavit of Scripts has not been filed the fact of the papers being in the custody of such persons may be therein stated. Upon that Affidavit the Registrar will allow the Subpœna to issue. If the Affidavit of Scripts has been filed, and Scripts be afterwards discovered to be in the possession of any person, then an Affidavit must be made as to their custody as already stated. Respecting the "Production of Wills, &c.," Rule 73 in Contentious Business states that "Applications for an Order for the production of Papers or Writings purporting to be Testamentary may be made to the Judge, by Motion or by

Subpœna when a suit is pending.

Affidavit of Scripts sufficient to show custody.

Application to Judge on Motion or Summons or Registrar's Order.

Summons, when a Suit is pending, and by Motion upon Affidavit when no suit is pending. If it can be shown that a Testamentary Paper is in the possession, within the power, or under the control of any person, a Subpœna for the production of the same may be obtained by a Registrar's Order founded on an Affidavit."

Until the passing of 21 & 22 Vict., cap. 95, it was the practice to move for all Subpœnas to bring in Testamentary Papers, but now, under the 23rd section of that Act, a Registrar of the Principal Registry, whether any suit shall or shall not be pending, may issue a Subpœna to bring in a Will, and the applications to the Judge are confined almost entirely to cases in which there is not sufficient certainty that the person supposed to have the Will really has it. In these cases a Subpœna is not required. By 20 & 21 Vict., cap. 77, sect. 26, it is enacted that if there appear reasonable grounds for believing that a person has the knowledge of any paper or writing the Court may direct such person to attend, for the purpose of being examined in open Court or upon interrogatories respecting the same, and, if so ordered, to produce and bring in such paper or writing. This direction to attend is generally obtained by Motion.

Difference  
between Judge's  
and Registrar's  
Subpœnas.

The "Subpœna to bring in a Script decreed by the Court" differs in form from the Subpœna issued by a Registrar. The former requires that if the Testamentary Papers be not in the custody of the party against whom it issues, that he do file in the Principal Registry an Affidavit to that effect, and therein set forth what knowledge he has of and respecting the said Paper Writing, or Script, and it also differs from a Registrar's Subpœna by inflicting a Pecuniary Penalty for non-obedience in these words, "this you shall in nowise omit, under the penalty of £100."

Pecuniary  
Penalty for  
disobedience.

Attachment for  
Contempt in  
not bringing in  
Will.

Motion for  
Attachment.  
Subpœna,  
Affidavit and  
Statement  
brought into  
Registry.

If the Will or Testamentary Paper be not brought in, in obedience to any Subpœna, an Attachment for Contempt of Court will be granted. To obtain an Attachment a Motion must be made to the Court by Counsel. For this purpose the usual Statement of facts must be made. The Subpœna must be brought into the Registry with an Affidavit of Service and an Affidavit of Non-Appearance, and that the Will has not been brought in.

Before making the Affidavit that the Will has not been brought in, the Appearance Book should be searched; in-

quiry should also be made of the Clerk of the Papers and of the Receiver, and at the Personal Applications Department, whether the Will has been brought in. The Appearance Book should be searched, because although a person against whom a Subpœna to bring in a Will has issued need not enter an Appearance on bringing it in, yet he may not have the Will in his custody and consequently might then enter an Appearance and file an Affidavit that the Will was not in his Custody, and the above inquiries are necessary as it has several times happened that Wills have been brought into wrong Departments or District Registries not mentioned, in supposed obedience to the Subpœna. The following are the Directions to Persons bringing in Testamentary Papers under a Subpœna:—

Search and inquire whether Will has been brought in.

“Any person bringing in a Will or Testamentary Paper in obedience to a Subpœna, is to take it in the first instance to the Clerk of the Papers, who will prepare a Minute to be signed by the sitting Registrar to whom the Will or Paper brought in is to be delivered, and the Registrar will sign the Minute which will record such delivery.”

Directions to persons bringing in Testamentary Papers under Subpœna

“The Minute is to be entered in the Book of Registrars’ Minutes in the usual manner, and the fee of 2s. 6d. for the entry will be payable, also a further fee of 2s. 6d. for filing each Testamentary Paper brought in. If these fees should not be paid by the person bringing in the Will or Paper, the same are to be charged to the person who may first apply to the Clerk of the Papers to make use of the Will or Paper so brought in. In case the person bringing in a Will or Testamentary Paper may desire to have a Voucher for its delivery into the Registry, he may take an office copy of the Minute on paying the usual fee for the same.”

“Any person served with a Subpœna to bring in a Testamentary Paper is at liberty to enter an Appearance on payment of the usual fees if he thinks fit to do so.”

By Non-Contentious Rule 87, the time fixed for entering an Appearance to a Subpœna to bring in a Testamentary Paper shall in all cases be exclusive of Sundays, Christmas Day, and Good Friday.

Time for entering appearance.

There is also in the Contentious Rules a Form (No. 22) of a “Subpœna to a Witness to be examined touching a Testamentary Paper of which he is supposed to have knowledge,” but as this form is rarely used it will be sufficient merely to point out its existence.

Subpœna to a Witness to be examined touching Testamentary Paper.

Will not in  
custody of party  
against whom  
Subpœna  
issued.

If the Will be not in the custody or under the control of the person against whom the Subpœna issued, he may, in order to save his contempt for not obeying the Subpœna, enter an Appearance and file an Affidavit that the Will is not in his custody or under his control.

Costs of  
Subpœna.

If a person has brought in a Will in obedience to a Subpœna, or appeared and filed an Affidavit that the Will is not in his custody or under his control, he may take out a Summons to show cause why he should not have his costs.

In the Prerogative Court if a person called on another to bring in a Will, within six months from the time of death of the Testator, he did so "at the risk of Costs."

### WILL BROUGHT IN FOR MOTION.

Will brought in  
for Motion.

WHENEVER a question arises respecting a Will or other Testamentary Paper on which it is necessary to move the Court, if such Will or Paper be in the custody of the Practitioner, it must be brought in and delivered to the Clerk of the Papers with the Statement for Motion.

### WILL BROUGHT IN ON RENUNCIATION.

Will brought in  
on Renuncia-  
tion of Executor  
or other person  
entitled to a  
Grant.

If a Will be in the custody of the Executor and he has executed an Instrument of Renunciation of Probate, the Will may be brought into the Registry with the Renunciation and filed for safe custody. A Registrar's Order is necessary for the purpose; a printed form of which may be obtained from the Clerk of the Papers.

If the Executor be dead the Residuary Legatee or other person next entitled to a Grant, but unwilling to accept it, may, on his Renunciation, in like manner deposit the Will in the Registry.

The Will and Renunciation must be deposited by the Practitioner to whom the Renunciation is addressed.

The fee for filing the Will is 10s.; for the Renunciation, 2s. 6d.; for the Order, 2s. 6d. After being filed the Will and Renunciation are handed to the Record Keepers.

"No person who renounces Probate of a Will or Letters of Administration of the personal estate and effects of a deceased person in one character, is to be allowed to take a representation to the same deceased in another character.—Rule 5, Non-Contentious.

## WILL BROUGHT IN FROM LUNACY OFFICE.

WILLS are brought into the Principal Registry from the Lunacy Office, upon the decease of the Lunatic. They are delivered to the Registrar and then handed to the Clerk of the Papers, who receives for filing the Will a 10s. fee stamp from the first person who may use the Will. After being filed the Will is handed to the Record Keepers to whom application must be made by Executors or other persons desiring to be sworn thereto for the purpose of taking a Grant.

Will brought in from Lunacy office.

## WILL BROUGHT IN ON ISSUING A CITATION.

WHEN a person issues a Citation against another to accept or refuse Probate or Administration with the Will annexed, if the Will be in the possession of the party issuing the Citation, he must on issuing the Citation bring the Will into the Registry and hand it to the Clerk of the Papers. The reason for this is that in a Citation to accept or refuse a Grant an intimation is inserted, that if the party cited do not appear and accept the Grant the Judge or the Registrars will give the Grant to the party issuing the Citation; but no such intimation can be inserted if the Will be not in the Registry.

Will brought in on issuing Citation to accept or refuse Probate or Administration Will.

## WILL BROUGHT IN WITH AFFIDAVIT OF SCRIPTS.

IN Testamentary Causes all parties file Affidavits of Scripts, and annexed thereto file any Will or Wills, Codicils, Drafts of Wills or Codicils or Instructions, that may be in their possession. Affidavits of Scripts will be hereafter alluded to. The intention here is merely to show the various ways in which Wills are brought into the Registry.

Will brought in annexed to Affidavit of Scripts in a Cause.

## WILLS FROM DISTRICT REGISTRIES.

It not unfrequently happens that a Will is taken into a District Registry, respecting which application has to be made to the Court on Motion, or which is to be the subject of Contentious proceedings. Sometimes these Wills are voluntarily sent from the District to the Principal Registry. Generally application is made to the Registrars of the

Wills from District Registries.

Principal Registry to request that the Wills or Testamentary Papers be transmitted to the Principal Registry for the above purposes. The mode of making this application is by letter, describing the papers and stating the Registry in which they are deposited and the purpose for which they are required, and enclosing postage stamps.

### WILLS NOT PROPERLY EXECUTED.

Will not properly executed.

THERE is one other way in which a Will, or rather Testamentary Paper, is brought into the Registry.

When a Will is not properly executed, so as to render it a valid Will, an Affidavit may be made of the facts and be taken with the Will to a Registrar who, if satisfied with the Affidavit, will write his fiat on the Will, "Probate refused." The next of kin may then proceed to obtain Administration as in case of an Intestacy. It was formerly the practice to move the Court for Probate of these Wills, which Motion was, of course, rejected; but the anomaly of showing the Court that a Will had been imperfectly executed, and then praying for Probate of it has been discontinued for the present more simple, expeditious, and less expensive practice. The fee for the fiat is 5s.; 1s. for filing the Will; and 2s. 6d. for filing each Affidavit. The fees, if not taken by the Registrar's Clerk, are taken by the Clerk of the Papers with whom the papers are filed.

Rules as to execution of Wills dated after 31st December, 1837.

"If there be no Attestation Clause to a Will or Codicil presented for Probate, or if the Attestation Clause thereto be insufficient, the Registrars must require an Affidavit from at least one of the subscribing Witnesses, if they or either of them be living, to prove that the provisions of 1 Vict., chap. 26, sec. 9; and 15 Vict., chap. 24, in reference to the execution were in fact complied with; and such Affidavit must be engrossed and form part of the Probate."—Rule 4.

"If on perusing the Affidavits of both the subscribing Witnesses, it appear that the requirements of the statute were not complied with, the Registrars must refuse Probate."—Rule 5.

"If on perusing the Affidavit or Affidavits setting forth the facts of the case, it appear doubtful whether the Will or Codicil has been duly executed, the Registrars may require the parties to bring the matter before the Judge on Motion."—Rule 6.

“If both the subscribing Witnesses are dead, or if from other circumstances no Affidavit can be obtained from either of them, resort must be had to other persons (if any) who may have been present at the execution of the Will or Codicil; but if no Affidavit of any such other person can be obtained, evidence on Affidavit must be procured of that fact and of the handwriting of the deceased, and the subscribing Witnesses, and also of any circumstances which may raise a presumption in favor of the due execution.”—Rule 7.

The various ways in which Wills are brought into the Principal Registry have now been stated.

It may be as well here to observe that whenever the Court has to be moved, or Contentious proceedings arise respecting them, the Clerk of the Papers ought to be instructed as to their having been deposited in the Registry, in order that he may take the necessary steps to have them in Court.

The mode in which Probates or Letters of Administration are obtained in cases when it is necessary to make application to the Court, and also how Probate of an alleged Will or Grant of Administration is opposed will now be stated.

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## CHAPTER II.

### OF CITATIONS.

1.—*Citations in Non-Contentious Business*—To accept or refuse Probate, Administration Will, or Administration.

2.—*Citations in Contentious Business*—To see a Will proved—To bring in Probate—To propound a Will or Testamentary Paper—To bring in Letters of Administration—To see proceedings—For Inventory and Account.

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CITATIONS are of two kinds, Non-Contentious and Contentious.

The word Citation explains the nature of the instrument itself. It is a document calling or citing a person to appear What is a Citation.

before the Judge, to do an act or to see one done. In the Prerogative Court the same instrument was called a "Decree," as it was "decreed" to issue by the Court or by a Surrogate. No such "decreeing" is now necessary, except against Heirs-at-Law or persons interested in real Estate, as will be hereafter seen.

Citations of  
different kinds.

The rules respecting "Non-Contentious" and "Contentious" Citations are similar, though the objects of Citations are widely different. It is intended here to explain their various objects, to show the forms of Citations, how they are obtained, and what proceedings these different Citations initiate.

The Non-Contentious Rules allude to Citations, but do not contain a form. In the Contentious Rules various Citations are named and forms given. Nevertheless, Citations of a Non-Contentious nature are the most numerous, and there will be no difficulty in defining them.

Non-Contentious  
Citations.

By Citations of this nature persons are cited to accept or refuse Probate or Administration with Will annexed, or Letters of Administration, or to show cause why the same should not be granted to the party citing. Thus they are distinguished from other Citations as "Citations to accept or refuse." These Citations seldom lead to Contentious Business though they may do so occasionally. It is sometimes necessary to Cite a person to accept or refuse a grant, not with the intention of allowing that person to take it if an appearance be given, but with the determination to oppose it. For example, it may happen that a person has died intestate leaving a Widow, and that she has become a dissolute character, yet as her right to the grant *may* not be destroyed by an *ex parte* assertion of her unfitness to have it, she may have to be cited to accept or refuse. If she appear, a Caveat may be entered against her taking the grant. She would then warn that Caveat and proceed by "Petition," and so far as that Petition constitutes Contentious Proceedings that Citation to accept or refuse would result in Contentious Business.\*

Non-Contentious  
Citation  
may lead to  
Contentious  
Business.

Citations are  
drawn in draft.

Settled by  
Registrar.

Citations are usually drawn in Draft and settled by a Registrar, but this is not imperative, for if of a merely ordinary description and correctly drawn they are signed at once without being previously settled. If required to be settled the Draft is brought to the Clerk of the Papers and by him forwarded to the Registrar; after being settled, the

\* A Petition is set down for hearing as a Cause—also see "Registrar's Order" passing over the Widow.



Draft is generally returned to the Clerk of the Papers and by him handed to the Practitioner.

The first questions in drawing a Citation are, What is the interest of the party or parties to be cited? and what is the interest of the party citing? The principle of a Citation is that you must set before the parties cited what is their interest and what is yours. The word "interest" requires explanation. It does not mean the amount of beneficial interest a person has in the deceased's property, but the nature of his interest in respect of the grant. An interest is acquired at least in three ways: 1st. Under a Will or Testamentary Paper, as an Executor or Legatee, or as the representative of these. 2nd. In the case of Intestacy, by relationship to the Intestate, or as representative of such relation. 3rd. Solely by Law, as in the case of a Creditor, or his representative.

Mode of drawing a Citation.

Interest of Parties.

When, therefore, the question is asked, what is your interest in the goods of the deceased? The answer is I am an Executor or Universal, Residuary or Specific Legatee, or Husband, Widow, or next of Kin, or party entitled in distribution, or a Creditor, or the representative of some one of these, viz.: his Executor, Administrator, or Assignee, &c.

Having ascertained the prior interests, the party citing has to "clear them off." An interest must be cleared off even though no person has existed to claim it; for instance, if an Intestate died a Widower, without ever having had a Child, and leaving a Brother or Sister who wanted the Grant, he or she would have to state in the Citation that the Intestate died a Widower, without Child or Father, leaving

Clear off prior Interest.

his natural and lawful Mother, &c. So in the case of a Will, if the deceased did not appoint an Executor, it must be stated that the deceased made his Will "but did not therein name any Executor." If he did name an Executor it must be shown what has become of him—whether he died in the lifetime of the Testator or afterwards, without having proved, or if he proved, and then died, whether he died testate or intestate, and whether his own Will has been proved, or whether his Executor renounced the Probate? There are four ways of clearing off the Executor, 1st—by showing that none was appointed, 2nd—that he was appointed but is dead Intestate, 3rd—that he has renounced, and 4th—if he be alive and has not renounced he will be cleared off by non-appearance to Citation.

Clearing off Executor.

- Persons equally entitled not Cited.** Persons equally entitled need not be cited to accept or refuse a Grant, for instance, one Residuary Legatee does not Cite any other Residuary Legatee, neither does one next of kin Cite another next of kin whatever be their degree of relationship, neither does a Creditor Cite another Creditor.
- Party in his own right entitled before representative.** It is a rule never to grant Administration to a party claiming by a representation while there is a party entitled in his own right. Every party, therefore, claiming by representation must, before he can obtain a Grant, Cite all those who are entitled in their own right, or obtain their renunciations.
- Persons entitled to general Grant not permitted to take limited.** "No person entitled to a general Grant of Administration of the personal estate and effects of the deceased will be permitted to take a limited Grant, except under the directions of the Judge," Rule 30. A Creditor, therefore, cannot Cite all persons entitled in distribution, and then take a grant limited to the amount of his debt.
- Citation by Attorney.** "In the case of a person residing out of England, Administration, or Administration with the Will annexed, may be granted to his Attorney, acting under the Power of Attorney," Rule 32, Non-Contentious. An Attorney may therefore issue a Citation. The Power of Attorney must be brought into the Registry at the time of issuing the Citation.
- Citation against an Executor.** If a person has made a Will and appointed an Executor, that Executor has the first right to prove the Will; if he neglect to do so a Citation may issue against him to accept or refuse the Probate. Before this Citation can be had the Will must either be brought into the Registry by Subpœna, as already stated, or be in the custody of the person about to extract the Citation, who will have to bring it into the Registry when the Citation is extracted.
- Citation to accept or refuse by Residuary Legatee.** If a person has made a Will and appointed an Executor and Residuary Legatee, the Residuary Legatee has the second right to prove the Will, or in other words, he is the first person who has a right to Letters of Administration with the Will annexed.
- It will be borne in mind that there are varieties or grades of Residuary Legatees; the Residuary Legatee in trust has priority over the Residuary Legatee for life, and over the beneficial Residuary Legatee, and the Residuary Legatee for life is preferred to the substituted Residuary Legatee; but by the

term Residuary Legatee is commonly meant the beneficial or absolute Residuary Legatee, and in the great majority of cases he has the second right to the Grant; when, however, the other interests exist, they must be cleared off to establish minor interests. In order to obtain that Grant, he must, if the Will be not in his possession, issue a Subpœna against the holder of the Will, whether he be the Executor or any other person, to bring it into the Registry, and then issue a Citation against the Executor to accept or refuse Probate, or show cause why Letters of Administration with the Will annexed should not be granted to himself, with an intimation that in default of appearance it will be so granted. If the Will be in his custody, he must as before stated, bring it in on issuing the Citation.

If a person has died, having made a Will and therein named Executors, Residuary Legatees and Legatees, and one of those Legatees wishes the Will to be proved, he may Cite the Executors to accept or refuse Probate, and the Residuary Legatees to accept or refuse Letters of Administration with the Will annexed, or show cause why Letters of Administration with the Will annexed should not be granted to himself with the intimation just mentioned. The observations with reference to bringing in the Will apply equally to this case as to the former cases.

Citation to accept or refuse by Legatee.

If there be no Residuary Legatee, the Legatee wishing to prove the Will must Cite the Executor, next of kin of the deceased, and persons entitled in distribution.

Legatee against next of kin.

Before a Creditor can obtain Administration with Will annexed he has to Cite the Executor and Residuary Legatee, or if the residue be undisposed of, the next of kin and parties entitled in distribution precisely the same as a Legatee. He need not Cite Legatees as his right is equal to theirs.

Citation by Creditor.

The Creditor will have to file an "Affidavit of Debt," that is to say, the Affidavit which he will file to lead the Citation must, in addition to the facts which a Legatee would state with reference to the Will, also state the amount of property, the nature and amount of his debt, and when it accrued, and that he holds no security, or none available without a representation.

In case of Intestacy, the time of the Intestate's death is the period at which the Interest of the parties entitled to share in the distribution of his property arises, and their

INTESTACY.

rights are ascertained from that time alone, however remote it may be at the time the inquiry is made. Such interest must be defined according to the statutes for the distribution of Intestate's Estates, and be traced by legal representation.

Parties entitled  
to Administra-  
tion.

When a person has died Intestate, a Bachelor, or a Widower without issue, leaving a father, he is the sole person entitled to Letters of Administration. If he be dead, the Mother is the next entitled, then Brothers and Sisters equally, and whether of the half or whole blood. If there be no Brothers or Sisters, then Grandfathers and Grandmothers become next entitled, after them Nephews or Nieces, and Uncles and Aunts become equally entitled to the Grant. If the Intestate has died leaving a Widow she is the first person entitled to Administration. If there be no Widow the Child or Children are entitled. If there be no Child a Grandchild is next entitled to Administration.

Creditor cites  
Father.

The Father of a Bachelor, or of a Widower without child, or of a Spinster, or Widow without child, being the sole person entitled to the Goods of the deceased, may or may not take Administration, as he thinks proper. He cannot be Cited by any party entitled in distribution—no person being so entitled; but as the deceased may have left Creditors the Father may be Cited by any one of these to accept or refuse Letters of Administration, or show cause why the same should not be granted to the Creditor, with an intimation that if he do not appear and accept the grant the Judge or the Registrars will give it to the Creditor.

Mother next of  
Kin.

Next of kin  
means at the  
time of death.

If the Father be dead the Mother of a Bachelor, or Widower without child, or of a Spinster, or Widow without child, is the next person entitled to Administration. She would then be entitled as the "next of kin." It should always be remembered that "the next of kin" means the person or persons nearest of kin to the deceased at the time of his death.

Mother cited by  
Brother or  
Sister.

Assuming the Intestate to have died a Bachelor, without a Father, leaving a Mother and Brothers and Sisters surviving, should either a Brother or Sister want to obtain the Administration, he or she would Cite the Mother to accept or refuse the Letters of Administration, or show cause why they should not be granted to himself or herself—the other Brothers and Sisters being only equally entitled with the Applicant need not be Cited. But if in addition to the Mother and Brothers and Sisters, there were Nephews and

Persons  
equally entitled,  
not cited.

Nieces, the children of a deceased Brother or Sister, one of whom wanted the Grant, he or she would have to Cite not only the Mother but all the Brothers and Sisters. The Nephew or Niece applying for the Grant need not, however, Cite the other Nephews and Nieces as they are of equal degree.

Brothers and Sisters.

Nephews and Nieces.

Again, if in the last mentioned case a Creditor wanted to obtain the Administration, he would have, in addition to Citing the Mother and Brothers and Sisters, to Cite all persons entitled in distribution, for instance, children of a deceased brother of the deceased.

Creditors against Mother and others.

In the Citation he would merely allege that he was a Creditor, without stating anything whatever respecting his debt—the particulars of which would appear in his Affidavit to lead the Citation, and the Intimation would be that if the parties Cited did not appear the Judge or Registrars would give the Grant to him.

Let us now see how the parties would proceed if the Intestate had died, leaving a Widow and Children and Grandchildren. The Widow may take Administration, as a matter of course, but if she did not, one of the Children might Cite her and would allege in the Citation that the deceased died Intestate, leaving his lawful Widow and Relict, and one of his natural and lawful Children: the Intimation would be, as before stated, that if the Widow did not appear the Court or Registrars would give the Grant to the party Citing. In the last mentioned case if a Grandchild (the Child of a deceased Child) wanted a Grant he would have to Cite the Widow and Children, naming them all. A Creditor would have to Cite the Widow, all the Children, and all the Grandchildren, if, as before stated, they were Children of a deceased Child. If there be no Child, then the Creditor must Cite all persons entitled in distribution, with the Widow to the personal Estate and Effects of the deceased.

Child cites Widow.

Grandchild cites Widow and Children.

Creditor v. Widow, Children, and Grandchildren.

There are three primary kinds of Grants, viz., Probate, Administration with the Will annexed, and Administration, and numerous ways in which the interest of parties may be stated.

Further statement of the nature of word "interest," and the order in which Grants are taken.

The following are the characters, and as nearly as possible, in the order in which Grants are taken:—

Probates are granted to—

Executors named in, or according to the tenor of the Will.

Executors for Life.

Ditto Substituted.

Letters of Administration with the Will annexed are granted to—

Executor, being also husband of Testatrix.

Executor, with consent of husband of Testatrix.

Attorney of Executor, if abroad.

Guardian ditto, if a Minor.

Committee ditto, if a Lunatic.

Universal Legatee in Trust.

Universal Legatee for Life.

Universal Legatee.

Universal Legatee Substituted.

Or their Guardians, if Minors.

Residuary Legatees, in Trust.

Residuary Legatees, for Life.

Residuary Legatees.

Residuary Legatees Substituted.

Or their Guardians, if Minors.

Husband.

Relict.

Next of Kin if residue be undisposed of.

Person entitled in distribution.

Legatee.

Creditor.

Letters of Administration are granted to :—

Husband.

Relict.

Next of Kin.

Person entitled in distribution.

Representative of Next of Kin.

All Persons entitled in distribution being cleared off.

Creditor.

Affidavit to  
lead and verify  
Citation.

“No Citation is to issue under Seal of the Court until an Affidavit in verification of the averments it contains has been filed in the Registry” (Rule 68). This Affidavit is usually brought with the draft Citation, but is not settled by the Registrar.

Affidavit to  
contain more  
than Citation.

There are two cases in which an Affidavit must contain more than is required in the Citation.

1st—An Order, dated 12th June, 1863, directs that “For the future the ages of Minors and Infants will not be required to be inserted in Citations, although such ages must appear in the Affidavit to lead the Citation.”

Minors and  
Infants.

2nd—Creditors' Affidavits to lead Citations are called "Affidavits of debt." They are required to contain statements with reference to the debt, namely, the amount of the debt, when and for what it accrued, that it is still justly due and owing, and that the Creditor holds no security for the same, or no security available without a representation of the deceased, and the amount of the property of the deceased—these statements are not required to appear in the Citation.

It is merely there stated that A. B. is "a Creditor of the deceased."

When the person to be Cited is out of the Country the Affidavit must show whether he has or has not any Agent, and, if any, that person must be served with the Citation.

The general rules with reference to Affidavits will be found in speaking of Exparte Motions.

The Citation is written on Parchment. It is then brought with the Draft, the Affidavit to lead Citation, and præcipe to the Clerk of the Papers; and if there be any Will, Renunciation, Power of Attorney, or other Paper alluded to in the Citation which is not in the Registry, the same must be brought therewith and filed.

The Clerk of the Papers, on being satisfied that a Caveat has been entered, will mark on the Citation "Caveat entered," and forward the Citation to the Registrar by whom it was settled for signature. It is then forwarded to the Sealer, and having had the Seal attached is delivered to the Practitioner.

Non-Contentious Rule 66, directs that "Before any Citation is signed by a Registrar a Caveat shall be entered against any Grant being made in respect of the Estate and Effects of the deceased to which such Citation relates, and notice thereof shall be sent to the District Registry of any District in which the deceased appears to have resided at the time of his death.

The Fees respecting Caveats are —

	s.	d.	
For the Entry of every Caveat...	1	0	Fees for Caveat.
For each Notice of such Caveat to the District Registrars ...	1	0	
For every Warning to Caveat ...	2	6	
For every Service of a Warning to Caveat sent by a Registrar through the Public Post. ...	2	6	

Creditors' Affidavit.

Agent,

Citation on Parchment. Præcipe and Papers brought therewith.

Signed by Registrar and sealed.

Caveat entered and Notice to District Registry.

	<i>s.</i>	<i>d.</i>
For Subducting a Caveat ... ..	1	0
For Notice to any District Registrar to whom Notice of a Caveat has been sent of its having been Subducted or Warned ... ..	1	0

Citations to be  
personally  
served.

"Citations are to be served personally when that can be done. Personal service shall be effected by leaving a true Copy of the Citation with the party Cited, and showing him the original, if required by him so to do" (Rule 69).

Citations  
served by  
Advertisement.

"Citations and other Instruments which cannot be personally served, are to be served by the insertion of the same, or of an abstract thereof settled and signed by one of the Registrars as an advertisement in such Morning and Evening London Newspapers, and such local Newspapers, and at such intervals as the Judge or one of the Registrars may direct" (Rule 70).

Abstract  
settled.

After the Citation has been sealed, it and the abstract are brought to the Clerk of the Papers, with the fee for settling the abstract, the Citation and abstract are then forwarded to the Registrar. After the abstract is settled the Citation and abstract are returned to the Clerk of the Papers from whom they are obtained by the Practitioner.

Number of  
insertions in  
Newspapers.

It is the practice to advertise the abstract three times, viz., one insertion in one paper at intervals of fourteen days.

Notices to  
Queen's Proctor  
and Solicitor  
for Duchy of  
Lancaster.

"In all cases where application is made for Letters of Administration (either with or without a Will annexed) of the goods of a Bastard, dying a Bachelor or a Spinster, or a Widower or Widow without issue, or of a person dying without known relation, notice of such application is to be given to Her Majesty's Procurator-General (or in case the deceased died domiciled within the Duchy of Lancaster, to the Solicitor for the Duchy in London) in order that he may determine whether he will interfere on the part of the Crown; and no Grant is to be issued until the Officer of the Crown has signified the course which he thinks proper to take" (Rule 75).

Citation  
against next of  
kin, if any.

"In the case of persons dying intestate, without any known relation, a Citation must be issued against the next of kin, if any, and all persons having or pretending to have any interest in the personal estate of the deceased, and the service thereof upon them shall be effected as required by



Rule 70. Such Citation must be also served upon the Queen's Proctor or upon the Solicitor for the Duchy of Lancaster, as the case may require" (Rule 76).

A married woman must be served in the presence of her husband, if the husband be not present he must also be served. Service on a married Woman.

Citations against Minors and Infants state who is their next of kin, and that person is served with the Citation. Service on Minors or Infants. It sometimes happens that Minors and Infants are not resident with their next of kin but with friends, at school, or apprenticed, they are then served in the presence of the person with whom they happen to be residing—the next of kin is also served.

Citations do not state that the party to be served is a Lunatic, but the person who has to serve the Citation on ascertaining that fact, serves him in the presence of the Doctor or Nurse or person having the care of him, and his Committee (if he have one) must also be served. Service on Lunatic.

If there be no Committee a next of kin of the Lunatic must be served.

The service of the Citation should be endorsed thereon. Citation endorsed.  
 "This Citation was served by \_\_\_\_\_, on the within-named \_\_\_\_\_, of \_\_\_\_\_, at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_." Form of Endorsement.

(Signed) \_\_\_\_\_."

It is not the practice in the Probate Court to return Citations, if there be an appearance thereto, but if there be no appearance the Citation is brought in with the Papers for Motion, among which must be an Affidavit of service. Return of Citation. The Affidavit of service should state that the Citation was served by "leaving a true copy," and by showing the Original (if required). Affidavit of service.

When a Citation cannot be personally served in consequence of the party to be served endeavouring to evade service, or in consequence of his present residence not being known, the person who has to serve the Citation must make an Affidavit of the effort he has made to serve it, and that he has been unable to do so. If this Affidavit be satisfactory to a Registrar he will direct the mode of service by advertisement, according to Rule 70 already quoted. Failing to serve.

Search for every appearance is to be made in the "Appearance Book." The Practitioner must obtain a Search for Appearance.

search ticket in the ordinary way from the Record Keeper's Department, Fee 1s.

Appearance Book.

The appearance book is kept in the Department of the Clerk of the Papers.

If no appearance move the Court.

If there be no appearance to a Citation to accept or refuse a Grant the party issuing the Citation will proceed by Motion, the proceedings in which are hereafter stated under the head of "Motions after Citation to accept or refuse."

If appearance obtain Registrar's Order.

If an appearance be given by the party cited to accept or refuse he may obtain the Grant by an "Order for Grant to issue after service of Citation,"—fee 2s. 6d. A Form of this Order may be obtained from the Clerk of the Papers.

## CITATIONS IN CONTENTIOUS BUSINESS.

Citations in Contentious Business.

"When a party proposes to prove a Will or Codicil in solemn form of law, and no Caveat has been entered, or a Caveat has been entered and no appearance given to the warning thereof, the Contentious Business shall be held to commence with the extracting of a Citation in the Forms Nos. 1 and 2, or in some similar form." (Rule 14).

Form of Citation.

To see Will proved.

The Form No. 1 in the Contentious Rules is "Citation to see Will proved;" No 2, "Citation to bring in Probate."

To bring in Probate or Administration.

There is another Form of Citation (No 3) in the Contentious Rules by which suits are commenced, viz., "Citation to bring in Administration."

To propound Testamentary Paper, &c.

But these three Citations by no means exhaust the list; there are other kinds of Citation of common use and great diversity which commence causes. For instance, Citations calling on parties to propound alleged Wills or Codicils—to show cause why Administration Will of a Testamentary Paper should not be granted—why Probate of Will and one or more Codicils should not be granted—to take Probate of Codicil to Will already proved—and so on.

The nature of Citations will also be seen by reference to the modern precedents and list of cases of Citations issued from the Prerogative Court, in the Appendix.

A variety of Citations commence Contentious proceedings; but a "Citation to see Will proved" is the only one that *necessarily* leads to a Cause. In this case the Executor, either before or after he has obtained Probate of a Will in common form, voluntarily propounds the Will and cites

those interested under an intestacy to see it proved in solemn form. The Citation, therefore, would fail in its effect if the Cause were not proceeded with. Not so with reference to Citations against parties to do an act. A party may be cited to bring in a Probate or Administration, and if brought in and abandoned, there need be no Contentious proceedings. A party may be cited to propound a Testamentary Paper, but if he do not propound it there may be an end of Contentious proceedings. An Executor may be cited to take Probate of a Codicil of which he has neglected to take Probate, and if he accept Probate there is an end of Contentious proceedings. In these cases the Citation has answered its purpose and become exhausted.

There are, then, two modes of discontinuing the proceedings, viz., to bring the case before the Court on Motion, or take out a Summons to discontinue the Contentious proceedings, and afterwards obtain a Registrar's Order for the Grant to issue.

Contentious proceedings are frequently discontinued by Summons, and the Registrars make Orders for the Grant to the persons entitled. Suppose a person be cited to bring in a Probate, this does not compel him to propound the Will. He is not obliged even to enter an appearance. He may, if he please, simply attend in the Registry and deposit the Probate with the Clerk of the Papers. If a Probate be brought in and no appearance be entered the party issuing the Citation would not then proceed as in a Cause; two courses would be open to him, viz., either to move the Court to revoke the Probate—discontinue the Contentious proceedings, and grant Administration (if there be no other Will) to him—or the Contentious proceedings might be discontinued by Summons and consent of the party bringing in the Grant to its revocation, which might then be revoked by Registrar's Order.

Probate  
brought in and  
abandoned.

Mode of  
proceeding.

A Citation also to bring in Administration may or may not cause Contentious proceedings. The form given in the Rules suggests that the Administration should be brought in because it has been discovered that the deceased made a Will, but other sufficient reasons may be assigned for having it brought in. Thus,—it may have been granted on a false or erroneous or alleged false or erroneous statement of relationship to the deceased. In this case the party cited might bring in the Administration and dispute the interest

Administration  
brought in and  
abandoned.

Mode of  
Proceeding.

of the party citing and call upon him to propound and prove his Interest, which would lead to an "Interest Cause." Assuming the Citation to have issued in consequence of a Will having been discovered, the party cited might bring in the Administration, enter an Appearance, and dispute the validity of the alleged Will, which would lead to a Testamentary Cause. On the other hand no cause need ensue from the issuing such a Citation, because the party Cited might bring the Letters of Administration into the Registry without entering an appearance, which he is not called upon to do, as already stated with reference to a Probate. In such a case the party issuing the Citation might move the Court to revoke the Administration, discontinue the Contentious proceedings, and grant Probate or Administration to himself as the case may be; or he might obtain the consent of the party bringing in the Administration to its revocation and obtain a Registrar's Order for the Grant.

The circumstances of these cases are so various that it would be useless to attempt to state what course the Registrars would take in every case.

There is one safe mode of proceeding. Before the Cause is dismissed on Summons it is often advisable to ask the Registrar whether he will make the subsequent Order for the Grant, if he decline, the case may be brought before the Judge on Motion.

In "*Collingwood v. Collingwood*, January, 1866," an Administration was brought in and no appearance entered, the Defendant consented to its revocation, an Affidavit of the facts was exhibited, stating that the Citation had been brought in, that no Appearance was entered, and that the party bringing it in had signed a consent to the Administration being revoked, whereupon the Registrar revoked it.

In "*Wadsworth v. Walton*, June, 1866," a Probate was brought in, in obedience to a Citation, and an Appearance having been entered the Contentious proceedings were discontinued on Summons by consent, whereupon a Registrar revoked the Probate.

Nevertheless Citations of a Contentious nature generally lead to further Contentious proceedings—that is, to a Cause.

"Citations can only be extracted from the Principal Registry, and no Citation is to issue under Seal until an Affidavit in verification of the averments it contains has been filed in the Registry." Rule 13.

Rules respect-  
ing Citations  
in Contentious  
Business.

Affidavit  
required.

"Before a Citation is signed by the Registrar, a Caveat shall be entered against any grant being made in respect of the Estate and Effects of the deceased to which such Citation relates, and notice thereof shall be sent to the Registrar of any district in which the deceased appears to have had a residence at the time of his death. Such Caveat is to be renewed from time to time, so as to be kept in force so long as the proceedings arising from the service of the Citation are pending. This Rule is not to apply to Citations to exhibit an Inventory and to render an Account, nor to Citations to show cause why a Bond should not be assigned in order to its being enforced against the Sureties." Rule 15.

Caveat to be entered.

Caveat to be renewed.

"Every Citation should be written or printed on parchment, and the party extracting the same, or his Proctor, Solicitor, or Attorney, shall take it together with a Præcipe, a form of which is given marked No. 5 (in the Contentious Rules), to the Registry, and there deposit the Præcipe and get the Citation signed and sealed. The address given in the Præcipe must be within three miles of the General Post Office." Rule 17.

Citation may be written or printed on Parchment.

The form of Præcipe alluded to in the preceding Rule is not now accurate. The Interest of the party issuing the Citation and of the party Cited are to be stated. The Præcipe should be on half a sheet of foolscap paper. Printed forms may be obtained of the Stationers.

Form of Præcipe.

The Affidavit to lead Citation against Minors and Infants must state, in addition to the averments required for the Citation, the ages of the Minors and Infants, but their ages are not required to be inserted in the Citation, although such ages must appear in the affidavit to lead the Citation." (A)

Minors and Infants ages.

Formerly Minors and Infants were called upon to "appear lawfully," but at present the expression "Cause an appearance to be entered for you" is to be used in Citations with respect to Minors and Infants as well as to other persons."

Minors and Infants. How Cited to appear.

"Citations are to be served personally when that can be done, the party Cited being resident in Great Britain or Ireland, but if personal service cannot be effected the direction of the Judge or Registrars as to the mode of service must be obtained. Personal service shall be effected by leaving a true copy of the Citation with the party Cited, and shewing such party the original if required by him so to do." Rule 18.

Citations how served.

(A) Note.—This Order has been stated in speaking of Non-Contentious Citations, but the Writer has in several instances reprinted Rules and directions when the convenience of the reader appeared to render it desirable. See page 78.

Citation by Advertisement. "Citations may be served upon parties resident out of Great Britain and Ireland by the insertion of the same or of an abstract thereof, settled and signed by one of the Registrars, as an Advertisement in such of the Morning and Evening London Newspapers, and, if necessary, in such local Newspapers, and at such intervals as the Judge or a Registrar may direct, provided that in any case the Judge or a Registrar may direct a Citation to be served personally. If the party Cited be abroad, having an Agent in England, such Agent must be served with a true copy of the Citation." Rule 19. To save expense an Abstract is generally used, which is prepared by the Practitioner, and brought with the Citation, after it has been sealed, to the Clerk of the Papers, and by him is forwarded to the Registrar, when not otherwise directed.

Newspapers used. The London Newspapers originally ordered to be used were the *Times*, the *Morning Post*, and the *Globe* or *Evening Herald*, but the Registrar's direction is generally taken hereon. One insertion is required in one Paper at intervals of a fortnight.

Agent named. The Affidavit to lead the Citation, and the Citation ought to state the name of the Agent or that the party Cited has no Agent in this Country.

Appearance entered. "Before a party can proceed after the service of a Citation, an Appearance must have been entered by or on behalf of the party Cited, or an affidavit of personal service and of non-Appearance must, together with the Citation, have been filed in the Registry; or if personal service has not been duly effected, the Order of the Judge, or of one of the Registrars in his absence, founded on an Affidavit and giving leave to proceed, must have been obtained. In case the Citation has been advertised, the Newspapers containing the advertisement, together with the Citation and an Affidavit of Non-Appearance must be filed in the Registry." Rule 20.

Non-appearance.

### CITATIONS TO SEE PROCEEDINGS.

Citation to see proceedings. Another kind of Citation is also used in Contentious Business, viz., "Citation to see proceedings."

Who may extract. "Citations to see proceedings may be extracted from the Registry, on the application of any party to the Cause" Rule 16.

A form is given, No. 19 in the Appendix.

Respecting these Citations Mr. Coote, in his Ecclesiastical Practice, speaks thus with reference to the Practice in the Prerogative Court.

"Before the Executor propounds the Will, he may, at this stage of the proceedings, in order to guard against the possibility of any other next of kin than those who have already appeared in the suit attempting to contest the Instrument at a future period, on the ground of not having been parties to the Suit, extract a Decree (Citation) to see proceedings, *i.e.*, to see the Will propounded, and the usual ensuing steps taken in regard thereto, against the other next of kin."

When to Extract.  
Citation to see proceedings.

"If the Executor has already propounded the paper against the Opponent who has appeared in the Cause, he must, notwithstanding on the return of a Decree (Citation) of this kind against the other next of kin, whether an appearance is given on behalf of them or not, repropound the Document in the same manner as before."

In the Probate Court Citations to see proceedings have issued at all stages of the proceedings.

"Any person proceeding to prove a Will in solemn form, or to revoke the Probate of a Will, may, if the Will affects real estate, apply to the Judge, or to a Registrar in his absence, for an order authorizing him to Cite the heir or heirs-at-law, or other person or persons, having or pretending interest in such real estate, to see proceedings, and the Judge or Registrar, on being satisfied by Affidavit that the Will in question does affect, or purport to affect, the real estate, will make an order authorizing the person applying to cite the heir or heirs-at-law or other such person or persons as aforesaid, Provided always that the Judge may give any special directions as to the persons to be cited which he may think the justice of the case requires." Rule 78.

Citation against Heir-at-Law or other person interested in real Estate.

If the heir-at-law or person interested in real estate be already before the Court, as next of kin or otherwise, a Citation against him to appear as heir-at-law is not required.

Heir-at-Law or person interested in real Estate. before the Court in another capacity.

A Summons may then be extracted to show cause why he should not also appear as heir-at-law (or as the case may be).

Parties cited to see proceedings are not called "Interveners." Interveners are persons who appear in a Suit

Interveners.





Citations for Inventory and Account are subject to the same Rules as other Citations, except that, under Rule 15, no Caveat need be entered.

In the Appendix, cases will be found in which they were extracted from the Prerogative Court.

### CITATION TO SHOW CAUSE WHY A BOND SHOULD NOT BE ASSIGNED IN ORDER TO ITS BEING ENFORCED AGAINST THE SURETIES.

These Citations are no longer required.

Citations v.  
Sureties.

The party may now move on Affidavit for a Rule *nisi*, against Sureties, to show cause why the Bond should not be assigned.

In concluding this Chapter on Citations, it may be observed that when a party cited fails to bring in a Probate, Administration or Inventory and Account, an Attachment for Contempt of Court may be issued against him. If he be cited to propound a Document, and do not propound it, an Attachment for Contempt of Court is not the next step, but the Document will be considered invalid, so far as the person cited is concerned.

Attachment for  
non-obedience  
to Citation.

Every Attachment must be moved for by Counsel before the Judge himself. See Motions in Contentious Business.

## CHAPTER III.

### OF MOTIONS.

*Motions ex parte—After Citation to accept or refuse a Grant—In Contentious Business.*

There are three kinds of Motions, viz., Ex parte Motions, that is, without Citation or Notice to any person,—Motions after Citation, to accept or refuse a Grant, to which no appearance has been given,—and Motions in Contentious Business.

Different kinds  
of Motions.

Whenever any difficulty or impediment arises in obtaining Probate or Letters of Administration in common form, the Case may be brought before the Court on Motion.

Nature of  
Ex parte  
Motions.

It often happens that the difficulty is discovered by the

Practitioner himself. Sometimes application is made for a Grant, and the impediment is discovered in the Principal or District Registry.

"The Registrars are not to allow Probate or Letters of Administration to issue until all the inquiries which they may see fit to institute have been answered to their satisfaction." Rule 3, Non-Contentious, Principal Registry.

"If, on perusing the Affidavit or Affidavits setting forth the facts of the case, it appear doubtful whether the Will or Codicil has been duly executed the Registrars may require the parties to bring the matter before the Judge on Motion." Rule 6, Non-Contentious.

Registrars may  
require Case to  
be moved.

Subjects of  
Ex parte  
Motions.

In cases where there are Interlineations, Alterations, Erasures, or Obliterations in a Will, or any attempted Cancellation of a paper by burning, tearing, or otherwise, or where Deeds or Papers are referred to in a Will, and not forthcoming, or where any doubt arises as to what papers are to constitute the Will, or where there is any informality of execution, or any doubt as to the appointment of Executors, the Court is frequently moved for the Grant. There may be an irregularity in an Oath, Bond, Renunciation, Power of Attorney, Confirmation, or other Instrument respecting which the Court has to be moved.

The Court is also moved *ex parte* to alter or revoke Grants, to appoint Guardians, to decree Probate according to foreign laws, to decree Grants in cases where parties are supposed to be dead, to deliver Papers out of the Principal Registry, &c., &c.

These, and a great variety of similar questions, constitute the subjects of *Ex parte* Motions.

Statement for  
Motion.

Papers to  
accompany  
Statement.

In order to move the Court a Statement of the Case must be prepared and brought to the Clerk of the Papers in the Principal Registry, on the day appointed in the Term Card. The Papers necessary for hearing the Case—Wills, or Testamentary Papers, Renunciations, Consents, Powers of Attorney, Affidavits, Advertisements, or whatever other paper there may be, must accompany the Statement. The Executor's or Administrator's common form Oath and Affidavit are not required for the Motion, unless it be made respecting them, or they happen to have been prepared and supply requisite evidence.

Form of Ex parte  
Statement.

The Statement, according to practice, should be written on foolscap paper, folded lengthwise, with quarter margin.

It is, or ought to be, a brief and clear narrative of the facts contained in the Affidavits or Documents filed in support thereof.

In the Prerogative Court Ex parte Cases generally began thus :—

"In the Prerogative Court of Canterbury.

"In the Goods of A . . . B . . . deceased.

" CASE FOR MOTION.

"A. B., late of \_\_\_\_\_ deceased, departed  
this life on \_\_\_\_\_."

The facts were then stated, and the Statement concluded with a Prayer for what was required. The Prayer was written with a somewhat wider margin. It was in the form of a request that Counsel would be pleased to move the Court to decree what was required, which was distinctly specified, for instance:—

“Counsel will be pleased to move the Court to decree Probate of the said Will, as contained in the Papers marked 1 and 2, to A. B., the sole Executor named in the said Will.”

or

"Counsel is requested to move the Judge to decree Administration to A. B., on her giving the usual security and being sworn that the deceased died in or since the year 18 ."

or

“Counsel is requested to move the Court to decree Probate of the Paper marked A, as the last Will and Testament of the said deceased, or Administration (with this Paper as the Will annexed) to be granted to A. B., as the Executor, according to the Tenor or the Residuary Legatee in Trust named therein.”

or

“Counsel will be pleased to move the Right Honorable the Judge to decree Probate of the said Will, with the two sums as they originally stood, to wit, £100 and £200, and without the appointment of Mr. M. as an Executor.”

Motions in the alternative were always discouraged.

In 1853 Motion was made for Probate of a Will, with this Prayer, "either with or without the Memorandum, as

to the Court shall seem meet;" and in a Registrar's Note Book in the writer's possession it is said the Judge "did not approve of the alternative: Counsel should decide what Prayer to make."

In the Probate Court there have been Cases in which the Court was moved to decree a Grant in a specific way, or in such other way as the Court might think proper.

Motions are almost always supported by Affidavit. The Non-Contentious Rules respecting Affidavits are the following:—

**Non-Contentious Rules as to Affidavits.** "Every Affidavit is to be drawn in the first person, and the addition and true place of abode of every deponent making it is to be inserted therein." Rule 51.

**Every Affidavit drawn in 1st person.** "In every Affidavit made by two or more persons the names of the several persons making it are to be written in the Jurat." Rule 52.

**Names in Jurat** **Interlineation or erasure.** No Affidavit will be admitted in any matter in the Court of Probate of which any material part is written on an erasure or in the Jurat of which there is any interlineation or erasure." Rule 53.

**Deponent blind or illiterate.** "When an Affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the Registrar, Commissioner, or other authority before whom such Affidavit is made is to state, in the Jurat, that the Affidavit was read in the presence of the person making the same, and that such person seemed perfectly to understand the same, and also made his or her mark or wrote his or her signature in the presence of the Registrar, Commissioner, or other authority before whom the Affidavit was made." Rule 54.

**Before whom sworn.** "No Affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his Proctor, Solicitor, or Attorney, or before a Partner or Clerk of his Proctor, Solicitor, or Attorney." Rule 55.

"Proctors, Solicitors, and Attorneys and their Clerks respectively, if acting for any other Proctor, Solicitor, or Attorney, shall be subject to the Rules in respect of taking Affidavits which are applicable to those in whose stead they are acting." Rule 56.

**Affidavit of subscribing Witness.**

"In every case where an Affidavit is made by a subscribing Witness to a Will or Codicil, such subscribing Witness shall depose as to the mode in which the said Will or Codicil was executed and attested." Rule 57.

"The Registrars are not to allow any Affidavit to be filed (unless by leave of the Judge) which is not fairly and legibly written, or in which there is any interlineation, the extent of which at the time when the Affidavit was sworn is not clearly shown by the initials of the Commissioner or other person before whom it was sworn." Rule 58.

*Affidavit to be fairly written.*

The forms of Jurats are, if one Deponent only—  
 "Sworn at \_\_\_\_\_ on the \_\_\_\_\_  
 day of \_\_\_\_\_ 18 \_\_\_\_\_

*Forms of Jurat One Deponent.*

Before me,"

If more than one Deponent—  
 "Sworn by the said \_\_\_\_\_ and \_\_\_\_\_  
 (give the Christian and Surnames of each Deponent)  
 at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_  
 Before me,"

*Several Deponents.*

If the Deponent be a marksman—  
 "Sworn by the said \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_  
 day of \_\_\_\_\_ 18 \_\_\_\_\_ this Affidavit having been  
 first read over to him (or her), who seemed perfectly to  
 understand the same, and made his (or her) mark thereto  
 in my presence.

*Marksman.*

(A) \_\_\_\_\_ Before me,"

"Affidavits are not to be received by the Clerk of the Papers unless they are properly endorsed, viz. :—with the name of the business or Cause, the Christian and Surname of the Deponents, the date at which the Deponent was sworn, and the name of the Solicitor filing the same. All other papers must be sufficiently endorsed to shew their nature."

*Papers to be endorsed.*

Affidavits and other papers are folded lengthwise.

*How folded.*

Papers for Motions in the Probate Court are generally brought into the Registry four days before the day of hearing, the Court usually sits on Tuesdays, and the papers are ordered to be brought in before two o'clock on the preceding Thursday. This is of course liable to variation, and on first Sessions the papers have been required to be brought in on the preceding Wednesday.

*Papers when brought in.*

The fees are 5s. on the Motion, 5s. for the order thereon, 2s. 6d. on each Affidavit, 2s. 6d. on each Document, such as Renunciations, Consents, and Powers of Attorney, and 1s. on

*Fees.*

(A) "N.B.—In all Cases of Affirmation the exact words prescribed by the Statute applicable to the particular case must be used, and none other will be received." Non-Contentious Rules.

each exhibit, such as Newspapers or Letters ; Testamentary Papers are also called Exhibits when brought in on Motion.

Stamps not to be affixed.

It has been ordered that "On and after 1st January, 1866, Stamps are no longer to be affixed to the documents. In lieu of affixing the Stamps to the Papers, Practitioners are requested to hand them to the Clerk in attendance."

When and where Motion heard.

The Judge sits at Westminster at eleven o'clock in Chambers to hear Summonses, and at twelve o'clock in Court to hear Motions. Probate and Divorce Summonses and Motions are taken on the same day, but Probate Cases are taken first.

Order on Motion.

After a Motion has been made the Order thereon is entered by the Court Registrar in a Book.

Copy how obtained.

As soon as possible this Book is sent to the Registry, and all Copies of the Orders are made therefrom. To obtain a Copy, a 2s. 6d. Stamp must be taken to the Record Keepers Department, and the name of the Case and date of the Order must be stated to the Clerk in attendance, the Order will then be copied as soon as possible.

Further Motion

Motions are sometimes directed to stand over for further Evidence. When this is the case, and the further Evidence is obtained, the Practitioner may renew the Motion. For this purpose it is the practice to prepare a short "Supplemental" or "Further Statement," showing when the Case was heard and why it stood over, and that further Evidence has been obtained, and concluding with a Prayer, which is generally couched in some such words as these, "Counsel will be pleased to renew the Motion."

All former Papers must accompany further Case.

All the papers used on the previous Motion ought to accompany the further Case to the Court: the Practitioner should therefore give the necessary directions to the Clerk of the Papers to have them looked up.

Fees.

The fee for the further Case and Order is 7s. 6d.

Papers ordered to go to Court if no further Statement.

It sometimes happens that a case stands over, and is required to be renewed without any further papers being filed. In this case, if the papers have been returned to the Registry, the Practitioner should direct them to be sent again to Court for the day on which he wishes the case to be heard precisely as an original Motion.

Executor to be sworn.

When Probate or Administration with the Will annexed has been decreed, and the Executor or Administrator has not been sworn, he must, if in London, attend in the Registry

and be sworn before one of the Registrars. "Every Will and Codicil or Copy thereof, and every other Testamentary paper, to which an Executor or Administrator with the Will annexed is sworn, must be marked by such Executor or Administrator, and by the person before whom he is sworn." Rule 40.

In town before the Registrar.

The marking consists of signing the name in the ordinary way.

Marking Papers

The fees for swearing before the Registrars are taken by the Clerk of the Papers, to whom application must be made for the Will or Testamentary Papers.

Fees for swearing.

The fee for every Oath administered by the Registrar to each Deponent is 1s. For marking each exhibit, 1s.

If the Executor to be sworn be resident in the Country, the Testamentary papers will be delivered to the Practitioner upon his writing a Receipt in the Receipt Book (fee 1s.), and depositing with the Clerk of the Papers the engrossed copy which is to be used for the Grant. "The Registrars are to take care that the copies of Wills and Affidavits to be annexed to the Probates or Letters of Administration are fairly and properly written, and are to reject those which are otherwise, but it shall not be necessary that such copies be written in the engrossing hand heretofore in use." Amended Rule 79.

If Executor in the Country Will may be delivered out,

Engrossment may be written.

Before the Papers are delivered out this Engrossment must be examined by the Official Examiner, who will require a fee of 3d. per folio placed on a Schedule Paper, which may be obtained of the Stationers.

Examined Engrossment to be left.

It is the practice for Practitioners to retain copies of all papers brought in for Motion, but if no copy has been made of the Testamentary Papers so that the Practitioner is unable to prepare the Engrossment, he must either order an Office Copy and prepare the Engrossment therefrom, or the Engrossment can be made in the Registry. The fee for the Copy is 6d. per folio, for the Engrossment 1s. 6d. per folio, collating and parchment included.

Engrossment made by Practitioner or in Registry.

After the Executor or Administrator has been sworn in the Country, the Will must be returned to the Clerk of the Papers, who will, when requested, forward it with the Engrossment to the Receiver, to whom the "Common form" Papers must then be delivered by the Practitioner. If the Engrossment be taken from the Registry, for however short a time, it is always required to be examined again.

Will to be returned to Clerk of the Papers.

Forwarded to the Receiver.

The Receiver will forward the Papers to the Clerk of the Seat in the usual manner. The Clerk of the Seat prepares the Grant and forwards it to the Clerk of the Papers, in whose Department an entry of it is made. It is then taken to the Registrar, and having been signed by him is sent to the Sealer. The Sealer having attached the Seal to it will deliver the Grant to the Practitioner upon his production of the Receipt originally given him by the Receiver.

This Grant  
obtained.

Grant  
extracted from  
District Regis-  
try.

Wills and other Documents are frequently sent from District Registries in order that the Court may be moved respecting them. Rule 77 states that "after Motions have been made before the Judge in Court, the Registrars are, on the application of the parties (unless the Judge shall otherwise direct) to transmit to a District Registrar the original Papers and Documents in order that the Grant of Probate or Administration may be completed in a District Registry."

Papers may be  
sent through  
Post Office.

"Papers and other Documents may be transmitted by the Registrars of the Principal Registry to the District Registrars through the Post Office. The Packets containing them are to be superscribed with the words 'On Her Majesty's Service, and may be registered, if thought necessary.'" Rule 78.

Application to  
have papers  
returned.

Grant at Dis-  
trict Registry.

It is not the Practice to return Papers to a District Registry after Motion, except on the application of the Practitioner. By Rule 77 it appears that whether the Papers came from a District Registry or not to the Principal Registry they may "on the application of the parties" be sent to the proper District Registry for the purpose of the Grant being extracted there. By the 59th Section of the Probate Act of 1857, it is enacted that "It shall not be obligatory on any person to apply for Probate or Administration to any District Registry," or through any County Court, but *in every case* such application may be made through the Principal Registry of the Court of Probate.

Not obligatory  
to apply to  
District Regis-  
try.

Papers  
sent to District  
Registry.  
Copy required.

After Motion if it be required that the Papers shall be transmitted to the District Registry in order that the Grant may be extracted there, an officially examined copy of such papers as are required to be sent, must be left in the Principal Registry. If the Papers came originally from the District Registry, a Certificate from the District Registrar that copies are remaining there will be sufficient, the object of the copy being merely precautionary during the transit.



The Letter requesting papers to be sent to the District Registry must be addressed to the Registrars of the Principal Registry. It should describe the Papers and state the Court to which they are to be sent, and enclose Postage Stamps.

Application by Letter.

## MOTIONS

### AFTER CITATION TO ACCEPT OR REFUSE.

The mode of obtaining a Grant by ex parte Motion having been stated, we have now to see the mode of obtaining a Grant after Citation to accept or refuse has been issued. If the party Cited has not appeared to the Citation, the party who issued the Citation must move the Court in order to obtain the Grant.

Motions after citation to accept or refuse a Grant.

The general Rules as to the Statement, the Papers, the Fees, the Hearing, the Order, and the mode of obtaining the Grant are the same whether there be a Citation or not. These general Rules have been stated. The difference between the above, and purely ex parte Motions is this:—

Whenever a Citation issues, the matter is entered in the Court Books as a Cause. All Papers therefore should be so endorsed. The party Citing stands as the Plaintiff and the party Cited as Defendant.

Citation seemingly creates a Cause.

After the time mentioned in the Citation for the appearance of the party Cited, the Appearance Book must be searched to see whether any Appearance has been entered by or on behalf of the party Cited. For this purpose a Search Ticket must be obtained from the Record Keepers (Fee 1s.)

Appearance Book to be searched.

If no Appearance has been entered, an Affidavit to that effect must be made. A printed form of the Affidavit of Non-Appearance may be obtained from the Stationers.

Affidavit of no appearance.

The Statement of the Case must briefly recite the facts contained in the Affidavit that led the Citation and the subsequent proceedings, viz.,—as to the death of the Testator or Intestate—the persons he left entitled to his property—that a Citation has issued at the instance of against calling on him or them to appear and accept or refuse the Grant, but that no appearance has been entered to the said Citation, and conclude with a Prayer for the Grant to the party who issued the Citation.

Statement to be prepared.

Directions as to  
Cases for  
Motion.

By direction of the Registrars, Cases for Motion are to set forth—

“1. The style and object of, and the names and descriptions of the parties to the cause or proceeding before the Court.

“2. The proceedings already had, and the dates of the same.

“3. The prayer of the party on whose behalf the Motion is made.

“On depositing the Case with the Clerk of the Papers in the Registry, and giving notice of the motion, the Affidavits in support of the motion, and all original documents referred to in such affidavits, or to be referred to by Counsel on the hearing of the motion, must be also left with the Clerk of the Papers; and in case of such documents having been already filed or deposited in the Registry, the same must be searched for, looked up, and deposited with the Clerk of the Papers to be sent with the Case to the Judge.

“A copy of the Case for motion as delivered in the Registry, and of the affidavits and documents transmitted with the Case to the Judge, are to be laid before the Counsel by whom the Motion is made.

“The only Fees allowed on taxation for Case for Motion are as follows:

For drawing Case including fair copy for	}	£	s.	d.
the Judge... ..				
Copy for Counsel... ..				
			10	0
			3	4

“If the Case *necessarily* exceeds 7 folios in length, the further charges of 1s. 4d. and 4d. for every additional folio authorized by the Table of Fees are allowed.

“No instructions for Case or Brief for Counsel are allowed on taxation in respect of Motions.”

### MOTIONS IN CONTENTIOUS BUSINESS.

Motions in Con-  
tentious Busi-  
ness.

The general rules and directions respecting Motions have been already mentioned.

In this division of the subject there will therefore only be stated the nature of the Motions which arise in Contentious Business and the additional requirements respecting them. A Citation to commence or see proceedings in a Suit may be so special that the Registrars may direct it to be moved for—Citations against heirs at Law to see pro-

ceedings are moved for.—The Court is moved to allow Pleadings to be altered or amended,—to appoint Administrators pendente lite,—to discharge such Administrators,—to appoint Receivers of Real Estate,—to pronounce Wills invalid,—occasionally to revoke Grants,—for Order for parties to produce papers,—to decree Grants notwithstanding Caveats,—to decree Probate after Trial at Assizes,—to assign Bonds,—for writs of attachment—*feri facias* and sequestration,—for various Rules *Nisi* and Rules Absolute and to discharge such Rules,—to direct modes of trial,—for rehearing or new trial,—for leave to appeal,—for Costs.

Subjects of  
Motions in  
Contentious  
Business.

These and a variety of such questions form the subjects of Motions in Contentious Business. In Contentious Business it is the practice in all Motions to give notice to the opposite party. Rule 77, in Contentious Business, directs that "All Notices required by these Rules, or by the Practice of the Court, are to be in writing."

Notice of  
Motion.

The Notice as to application for mode of Trial is delivered to the opposite party with the Issue. Rule 48 directs that "A Copy of every such Notice shall be filed in the Registry, with the Case for Motion as to mode of Trial."

There are but few Cases in which an Affidavit of the service of Notice of Motion is required; generally speaking it is sufficient for Counsel to state that Notice of the Motion has been given to the opposite party.

In all cases the Orders on Motions are drawn by the Registrars, without the attendance of the Practitioner or presentation of the Counsel's Brief.

Orders drawn  
by Registrars.

It is not the practice to serve all copies of Orders on Motion upon the opposite parties as in cases of Orders on Summons. If the parties require Copies they order them in the Registry, but in some few cases, for instance, Rules *Nisi*, Copies are served on the opposite party by the party obtaining the Order. These Copies are not ordinary Office Copies, for "the Judge has directed that in all cases where an Order is applied for to be served on other parties the same is to be drawn up from the Registrar's Minute, and stamped with the Judge's signature, as in the case of an Order on Summons."

Serving copies  
of Orders.

## CHAPTER IV.

## SUMMONSES AND ORDERS.

Summons when  
used.

Rule 98 in Contentious Business states that, "A Summons may be taken out by any person in any matter whether Contentious or Non-Contentious, in which there is no rule or practice requiring a different mode of proceeding."

Summonses are not permitted to supersede Warnings, Subpoenas, Citations, or Motions.

A person who has entered a Caveat is "Warned" not Summoned to enter an appearance. A person is called upon to bring in a Will, or appear as a Witness in a Cause by Subpoena, not by Summons.

A Citation, not a Summons, issues against a person to accept or refuse a Grant, or to propound a Will, to see a Will propounded, or to bring in a Probate or Administration, or exhibit an Inventory and Account.

It sometimes happens that a Summons will answer the purpose of a Motion. For instance, suppose a person to have been cited to accept or refuse a Grant, and he enters an appearance, the presumption is that he intends to accept the Grant; but if he do not proceed to extract it, the person citing might move the Court for the Grant to himself; the opposite party might appear on that Motion, and give a satisfactory reason why he had not extracted the Grant; the Court might then allow him further time,—the same result might be obtained by Summons. If a Summons were extracted to show cause why the Defendant should not extract the Grant within a given time, if he did not extract it within the time he would be "in default" or "contempt of Court," and the Plaintiff would probably then successfully move the Court for the Grant to himself. There is a wide distinction, however, between what may generally be done on Motion and on Summons.

Summonses are extracted for a great variety of purposes; still, by the Rules and Practice they are limited in their use, and have an almost distinct place in the proceedings of the Court.

Summonses are mostly used in Contentious Business. In the Prerogative Court Contentious Business was trans-

acted by means of "Assignations," and Practitioners were "assigned" to take the steps in Causes.

In the Probate Court the printed Rules, in Contentious Business, to a great extent take the place of "Assignations."

If any deviation from those Rules be practised or required the Practitioner calls his Cause and Opponent before the Judge or Registrars by Summons, and the Order on that Summons is another form of "Assignation."

The analogy between former and present practice is here apparent, and the chief use of Summonses explained.

### TO OBTAIN A SUMMONS.

"A printed form must be obtained, and filled up with the object of the Summons, and a proper Fee Stamp affixed. It must then be taken to the Clerk of the Papers, who will insert in the blank left in the printed form the time when the Summons is to be made returnable, and get the Summons signed by a Registrar." Rule 99. Printed Forms may be obtained from the Stationers.

Summons how obtained.

The Fee for a Summons is 2s. 6d. This Stamp must be affixed to the Summons. The Practitioner will remember that a Summons is the only document to which it will be right for him to affix a Stamp, all other Stamps are given separately. It is the practice when the Summons is obtained to leave a Stamp for the Order; this enables the Clerk of the Papers to have the Order entered, stamped, and ready for the Practitioner when called for. The Stamp for every Order is 2s. 6d., except for the final Order in a Cause, which is 10s.

Fees.

There is only one Summons the words of which have been ordered by the Judge, viz., the Summons to discontinue a Cause. The words employed in such a Summons are, "to show cause why the Contentious Proceedings in this Cause should not be discontinued."

Summonses how drawn.

Proceedings discontinued.

In Summonses to change Practitioners the form commonly used is, "why of , should not be appointed Solicitor for the in place and stead of him the said on payment of his costs, and why the said should not file his Bill of Costs."

Change of practitioners.

No Summons is permitted that necessitates an argument as to the right to a Grant. If a person has been cited to

accept or refuse a Grant, and has appeared and not taken the Grant, a Summons to show cause why he should not extract it within a given time is allowed.

Conditional  
Order.

Summonses are sometimes drawn so as to produce a "Conditional Order," but, "When, in any Cause, a Conditional Order is made, the party entitled to proceed in default must, before he can take the next step, obtain an Order of the Registrars, or, if required, an Order of the Judge upon Summons, or on Motion in Court." Rule 45.

In a Case (*Adams & Pocock v. Pocock*, April, 1868) in which it was ordered on Summons that the Defendant do, within a week, file an Answer or discontinue proceedings and pay costs. An Affidavit was made that the Defendant had not, in any way, complied with the Order, whereupon the Registrar granted an Order for Administration, with Will annexed, to issue to the person entitled.

Summonses  
drawn in  
various ways.

Summonses may be drawn in various ways, and a slight difference in verbiage will frequently produce a different effect, and in some cases create ambiguity in the minutes of the proceedings in the Cause; for instance, a person wishes to cease being a party to a Cause, if he take out a Summons to shew cause why he should not be dismissed, the Order may follow that he be dismissed, the inference might be that he was dismissed because he had wrongly appeared; but if the Summons be for leave to withdraw and the order be so worded, the inference is that he withdrew because he no longer wished to remain in the Cause. Again, if a defendant has not filed his affidavit of Scripts or Plea, &c., and the plaintiff wish to proceed with the suit he may take out a Summons to show cause why the defendant should not file his affidavit of Scripts, or Plea, &c.; but if the plaintiff do not wish to proceed with the suit the Summons might be for the defendant to show cause why the contentious proceedings should not be discontinued, he not having filed his affidavit of Scripts (or as the case may be).

The most common Summonses are for Time.

Extension of  
time.

"The Judge shall in every case in which a time is fixed by these Rules for the performance of any Act, have power to extend the same to such time, and with such qualifications and restrictions, and in such terms, as to him may seem fit." (Rule 89.)

"To prevent the time fixed for the performance of any

act from expiring before application can be made to the Judge for an extension thereof, any one of the Registrars may upon reasonable cause being shewn, extend the time, provided such time shall in no case be extended beyond the day upon which the Judge shall next sit in Chambers or in Court to hear Motions." (Rule 90.) When the time has elapsed for filing any Document, a Summons for further time will not be granted, the Practitioner must wait until he is ready to file the Document and then take out a Summons for leave to file, notwithstanding the time for so doing has elapsed. A Summons for further time is not granted when the time allowed by the Rules will expire before the Return of the Summons, except the Summons be brought with a consent endorsed thereon.

The title of the Cause should be accurately stated, and the name of the deceased appear on the Summons.

Title of Cause.

"After the Summons has been filled up the Clerk of the Papers is then to enter the name of the Cause or matter, and of the Agent taking out the Summons in the Summons Book, and return the Summons (with the Stamp cancelled) signed, to the Applicant, who is to serve a copy on the party summoned. This copy must be served on the party summoned one clear day at least before the Summons is returnable, and before 7 p.m. On Saturdays the copy of the Summons is to be served before 2 p.m." (Rule 100.)

Summons entered and copy served.

Time of service.

"On the day and at the hour named in the Summons the party issuing the same is to present himself with the Original at the Judge's Chambers." (Rule 101.)

Summons heard in Judge's Chambers.

The Judge's Chambers are attached to the Court at Westminster Hall.

"Both parties will be heard by the Judge, who will make such Order as he may think fit, and a Note of such Order will be made by the Registrar in the Summons Book." (Rule 102.)

Both parties will be heard.

"If the Party summoned do not appear after the lapse of half-an-hour from the time named in the Summons, the party taking out the Summons shall be at liberty to go before the Judge, who will thereupon make such Order as he may think fit." (Rule 103.)

Non-appearance of party summoned.

"An attendance on behalf of the party summoned for the space of half-an-hour, if the party taking out the Summons do not during such time appear, will be deemed

Attendance of party summoned.

sufficient, and bar the party taking out the Summons from the right to go before the Judge on that occasion." (Rule 104.)

**Formal Order.** "If a formal Order is desired, the same may be had on the application of either party, and for that purpose the original Summons, or the Copy served on the opposite party, must be filed in the Registry. An Order will thereupon be drawn up, and delivered to the person filing such Summons or Copy. The Clerk of the Papers before giving out the Order is to see that the proper Stamp has been affixed to it and is to cancel such Stamp." (Rule 105.)

**Order by Consent.** "If a Summons is brought to the Clerk of the Papers, with a Consent to an Order endorsed thereon, signed by the party summoned, or by his Proctor, Solicitor or Attorney, an Order will be drawn up without the necessity of going before the Judge. Provided that the Order sought is in the opinion of the Registrars one which, under the circumstances would be made by the Judge." (Rule 106.)

The consent endorsed should be merely "I consent to an Order on this Summons," or some such words. If there be any condition as to Costs or otherwise in the consent, the Registrars will generally not make the Order.

**Summonses heard by Registrars.** In the long Vacation Summonses are heard by the Registrars in the Principal Registry at Doctors' Commons.

The rules respecting Summonses apply equally to Summonses heard by the Registrars.

**Orders where obtained.** All Orders on Summonses are obtained from the Clerk of the Papers. Those made by the Judge at Westminster are prepared there and forwarded to the Registry. Those by Consent are drawn by the Registrars' Clerks under the direction of the Registrars in the Registry, and (if not before) are ready on the day after the Summons is left.

**Forms of Summonses.** The forms in which Summonses may be drawn, and also a variety of the purposes for which Summonses are obtained, will be seen by reference to "Orders on Summonses" appearing in the Appendix.

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## CHAPTER V.

## PROCEEDINGS BY PETITION.

In the proceedings of the Prerogative Court, Instruments called "Acts" were numerous. There were Acts to lead Grants,—Acts to lead Decrees,—Acts sped on renunciation,—“Acts on Petition,” &c. The term “Act on Petition” appeared in the early proceedings of the Probate Court, and is occasionally now used, but the term “Act” does not appear in the present Rules respecting Petitions, and it has almost disappeared from Probate business. The Proctor proceeding by Petition in the Prerogative Court was assigned to deliver his Act to the opposing Proctor,—this Act was a Statement of his Case,—the Proctor to whom the Act was delivered “wrote thereto,” that is, he in a similar manner stated his case, and he was “assigned to return the Act.” If the opposing Proctor did not intend to reply further he added, by way of conclusion, words to the effect that “he wrote no further to the Act.” The Act was signed by both Proctors and then brought into Court, and both Proctors were “assigned to bring in their Proofs,” viz., Affidavits and documents in verification of what had been alleged in the Act on Petition. These proofs were generally brought in simultaneously, but if not, they were not shown to the Practitioners until complete. In the Probate Court the practice is similar. Rules 64 to 70 in Contentious Business apply to Petitions. By Rule 64, “Any question arising in a Cause, and not being one of interest, domicile, or other matter usually brought before the Court by declaration and plea, may be brought before the Court by Petition.” Petitions do not commonly arise in pending Causes. The majority of Petitions are original cases and distinct modes of proceeding. In some cases it is doubtful whether the proceedings should be by Petition or by Declaration. Summonses have been obtained to show cause why Declarations should not be abandoned and the proceedings be by Petition. The necessity for understanding what cases may be brought before the Court by Petition is therefore apparent. They hold a medium place between Motions and formal Suits.

The Term “Act on petition” explained.

Former practice.

Question heard by petition.

Summonses for leave to proceed by petition.

An Act on Petition has been defined as “A minor kind of interest cause where the quality or degree of Interest, and not the absolute fact of its existence, is in dispute.”\*

Act on Petition defined.

\* Coote's Ecclesiastical Practice, page 662.

But the difference between a Petition and an Interest Cause is generally this : In an Interest Cause the Interest itself is denied, and the party has to propound and prove it,—in a Petition the interest or right to the Grant is not denied, but each party seeks to deprive the other of the Grant by some allegation of unfitness, bad conduct, want of business habit, or similar personal defect.

Acts on Petition are not limited to questions of Interest ; an objection to an Inventory and Account, or question as to the liability of Sureties might be heard on Petition.

Next friends of Minors or Infants who each claim to be appointed Guardian, or a question of identity might be so heard.

In a recent case a Testator benefited his nephew Joseph under his Will. He had a nephew and a nephew by marriage, each named Joseph. He, as alleged, knew but little of his own nephew ; his nephew by marriage lived with him and managed his business. Each claimed to be the Joseph mentioned. A Declaration was filed, but the Court directed the Case to proceed by Petition. *Grant v. Grant*, May, 1868.

Notice to be given.

"The party desiring to proceed by Petition is to give Notice thereof in writing to all the other parties in the Cause, and such Notice is to set forth the question intended to be raised for the decision of the Court, and a Copy of such Notice is to be filed in the Registry." Rule 65.

Time of delivery

"In proceedings by Petition the Plaintiff shall, within eight days after he has given Notice, deliver his Petition to the Defendant, and file a copy thereof in the Registry upon one and the same day." Rule 66.

The fee for the Petition is 5s. and 1s. for the Notice.

Answer to be filed.

"The Defendant shall, within eight days after the delivery of the Petition, deliver his Answer to the Plaintiff and file a copy thereof in the Registry upon one and the same day, and the same course shall be pursued with respect to the Reply, Rejoinder, &c., until the Petition is concluded." Rule 67.

Conclusion to petition.

The mode of concluding a Petition in the Prerogative Court has been stated ; an analogous proceeding has in some cases been adopted in the Probate Court, viz., a Conclusion to the Petition has been filed, the Practitioner stating that he "wrote no further to the Petition," or some such words. The fee for the Answer is 5s., and the same for every subsequent Reply or Rejoinder.

“When the Defendant raises the question to be heard by Petition, and gives notice thereof to the Plaintiff, the Plaintiff shall, within eight days from the receipt of such Notice, file a Petition ; otherwise the Defendant shall be at liberty to do so.” Rule 68. Question raised by Defendant.

“Both Plaintiff and Defendant shall, within eight days from the day upon which the Petition is concluded, file in the Registry such Affidavits and other Proofs as may be necessary in support of their several averments therein.” Rule 69. Proofs to be filed.

No Record is required.

“After the time for filing the Affidavit and other Proofs has expired, the Petitioner is to set down the Petition for hearing in the same manner as a Cause.” Rule 70. Record not required.  
Petition to be set down for hearing.

A Setting down paper and a Notice paper may be obtained from the Stationer. The Setting down fee is 5s., and 1s. for the Notice. Fees for setting down.

The Petition takes its turn for hearing amongst the Causes before the Court itself. How heard.

Summonses to amend a Petition or Answer, or for further time to file, or file notwithstanding the time has elapsed, or for any other purpose, are granted precisely the same as in Causes. Summonses for further time.

The fees for hearing are the same as those hereafter stated as payable in a Cause, and are to be paid in the Registry. Fees for hearing

### FORM OF PETITION.

IN HER MAJESTY'S COURT OF PROBATE.

A. B. v. C. D.

The day of 18

A. B. (or E. F., Proctor, Solicitor, or Attorney for A.B.), the Plaintiff, says that

(Here insert all the facts which are to be alleged)

Wherefore the said A. B. prays that

(Here end with the Prayer of the Plaintiff)

(Signed) A. B. or E. F.

Form of Petition.

### FORM OF ANSWER.

IN HER MAJESTY'S COURT OF PROBATE.

A. B. v. C. D.

The day of 18

C. D. (or G. H., Proctor, Solicitor, or Attorney for C. D.), the Defendant, says that

Form of Answer to Petition.

(Here insert the facts to be alleged in answer)  
 Wherefore the said C. D. prays that  
 (Here insert the Prayer of the Defendant)  
 (Signed) C. D. or G. H.  
 The Reply, Rejoinder, &c., (if any such be necessary),  
 are to be in the same form.

## CHAPTER VI.

## TESTAMENTARY CAUSE.

Citation—Caveat—Appearance—Affidavits of Scripts—Citation to see Proceedings—Heir-at-Law—Appointment of Administrator or Receiver of Real Estate pendente lite—Inventory—Interveners—Declaration—Plea—Replication—Further Pleadings—Demurrer—Issue—Notice as to Mode of Trial—Motion for Directions as to Mode of Trial—Record—Setting Cause down for Trial or Hearing—Questions for Jury—Notice to Admit and Produce—Evidence—Special Jury Panel—Hearing or Trial—Trying Issue at Assizes—Entry on the Record—New Trial—Re-hearing—Appeal—Obtaining Grant after Termination of Contentious Proceedings.

Parties to  
Cause.  
Executors.

The Rules in Contentious Business state respecting parties to suits that "Executors or other parties who previously to the passing of the Court of Probate Act 1857 might prove Wills in solemn form of Law, shall be at liberty to prove Wills under similar circumstances, and with the same privileges, liabilities and effect as heretofore (Rule 4.)

Next of kin.

"Next of kin and others who, previously to the passing of the said Act, had a right to put Executors or parties entitled to Administration with Will annexed upon proof of a Will in solemn form of law, shall continue to possess the same rights and privileges, and be subject to the same liabilities with respect to costs, as heretofore" (Rule 5.)

Interveners.

"Parties who previously to the passing of the said Act had a right to intervene in a Cause may do so, with leave of the Judge or one of the Registrars, obtained by Order on Summons, subject to the same limitations and the same rules with respect to Costs as heretofore" (Rule 6.)

Minor party to  
suit.

"A Minor may elect a guardian for the purpose of carrying on, defending or intervening in a suit, in the same

manner and subject to the same rules as in respect of non-contentious business, and without having such guardian assigned to him, but guardians are to be assigned to infants (under the age of seven years) for the above purposes by the Judge, or by an Order of one of the Registrars, founded on an Affidavit to the effect required for such assignment in non-contentious business" (Rule 74.)

Testamentary causes commence in two ways, either by Citation or by Caveat and Warning. Citations in Contentious Business have been already mentioned.

Commencement  
of Cause by  
Citation or  
Caveat and  
Warning

The Rules No. 7 to 12 in Contentious Rules apply to Caveats.

"Caveats may be entered in the Principal Registry of the Court of Probate or in a District Registry thereof, if in the Principal Registry the person entering the Caveat must insert the name of the deceased in the index to the Caveat Book" (Rule 7.)

Caveats when  
entered.

"A Caveat shall bear date on the day it is entered, and shall remain in force for the space of 6 months, and then expire and be of no effect but may be renewed from time to time (Rule 8.)

Caveat in force  
6 months.

"Caveats shall be warned from the Principal Registry. The warning is to be served by leaving the same or a true copy thereof at the place mentioned in the Caveat as the address of the person who entered it" (Rule 9.)

Warned from  
Principal  
Registry.  
Warning how  
served.

"It shall be sufficient for the warning of a Caveat that a Registrar send by the Public Post a Warning signed by himself, and directed to the person who entered it, at the address mentioned in it" (Rule 10.)

Warning by  
Post.

"The Warning to a Caveat is to state the name and interest of the Party on whose behalf the same is issued, and if such person claims under a Will or Codicil is also to state the date of such Will or Codicil, and must be accompanied by an address within three miles of the General Post Office at which any Notice requiring service may be left. The form of Warning will be supplied in the Registry" (Rule 11)

Warning to  
state name and  
interest of party  
issuing.

Address of  
party within 3  
miles of Post  
Office.

"Upon an appearance being entered in answer to the Warning of a Caveat the matter shall be entered as a Cause in a Court Book and the Contentious Business shall thereupon be held to commence, and the expenses of the entry of such Caveat and the Warning thereof shall, upon taxation, be considered as Costs in the cause" (Rule 12.)

Contentious  
proceedings  
commence.

Costs of Caveat  
and Warning.

The Caveat Books are kept by the Clerks of the Seats and the form of Warning will be supplied by them.

Caveat Books  
where kept.

## APPEARANCES.

Appearance to Citation or Warning.	“All appearances are to be entered in the Principal Registry in a Book provided for the purpose, and kept by the Clerk of the papers. The entry must set forth the interest which the person on whose behalf it is entered has in the Estate and Effects of the deceased” (Rule 26.)
Appearance Book kept by Clerk of the Papers.	
Address of party entering Appearance.	“The entry of the appearance of a party shall be accompanied by an address within three miles of the General Post Office” (Rule 27.)
Directions as to Appearances.	It is ordered by the Registrars. “That all entries of Appearance to Citations and Caveats with a view to the commencement of contentious proceedings shall set forth the Name in full and the interest of the person or persons for whom the Appearance is entered.”
Interest of parties.	“That without the order of the Judge or permission in writing of one of the Registrars no such Appearance shall be entered for any person claiming an interest other than the following :
	1. Executor
	2. Legatee (Specific, Pecuniary or Residuary) in trust or beneficial.
	3. Next of kin.
	4. One of the persons entitled in distribution in case of an intestacy.
	5. Executor or Administrator of a beneficial Legatee, next of kin or person entitled in distribution who survived the testator or intestate but is since dead.
	6. Creditor.
	7. Executor or Administrator of a Creditor.
	8. The Husband of any person claiming an interest in one of the above characters.
Date of Will required.	“That the appearance entered on behalf of an Executor or Legatee, or the representative of a Legatee, shall state the date of the Will or Codicil under which he or she claims an interest.
Relationship to Testator.	“That the appearance entered for a next of kin or person entitled in distribution, or the representative of a next of kin or person so entitled, shall set forth the relationship of such next of kin or person entitled to the testator or intestate.
Citation to see proceedings.	“That an appearance entered to a Citation to see Proceedings shall set forth the interest in respect of which the party is cited.

“That the Clerk in charge of the Appearance Book be authorized to cancel any Appearance the entry of which is not made in conformity with this order.” Cancelling appearance.

“In case the party cited does not appear within the time limited in the Citation the Cause shall proceed in default, nevertheless the party cited may enter an appearance at any time before a proceeding has been taken in default, or afterwards by leave of the Judge or of one of the Registrars.” Rule 29. Default of Appearance.

It is not the practice in the Probate Court to file Citations to which an appearance has been given, but when no appearance has been given thereto, the Citation, with an Affidavit of service and an Affidavit of non-appearance, must be filed, after the time limited in the Citation for the appearance has expired. Citation to be filed with Affidavits of Service and non-appearance.

After an appearance has been entered either party may deny the interest of the other, and any dispute respecting the validity of a Will will abate until the interest of the party opposing it has been proved. Denying interest of Party appearing.

“If the interest of the party asserting himself to be next of kin is denied by the Executor, the suit then, for a time, assumes a different form. Interest cause created.

“The next of kin, by the denial, is compelled to propound his interest in a preliminary Suit of exactly the same nature as that which is termed an Interest Cause; and the interest of the next of kin, being ultimately proved, he is admitted by the Court a Contradictor to the Will, and the testamentary or principal Suit thenceforward goes on in the same manner as if the interest of the party had been originally confessed by the Executor.

“If the next of kin is also a legatee under the Will which he puts in Suit, and has received the amount of such legacy, although legally admissible as a Contradictor, he must bring in his legacy, with all interest accrued upon it, before proceeding in the Cause.” (A)

The party denying the Interest may take out a Summons against the opposite party to show Cause why he should not propound his Interest and file his Declaration. Summons to propound Interest.

“In a Testamentary Cause, after delivery of the Declaration, the interest of the party to whom it has been delivered cannot be disputed by the party declaring, except by leave of the Judge.” Rule 37. Time to dispute Interest.

Summons to  
amend Appearance.

If there be any irregularity or error in the Appearance either party may take out a Summons for leave to amend his own error, or against his opponent, to show cause why he should not amend his Appearance.

### AFFIDAVIT OF SCRIPTS.

Affidavit of  
Scripts.

After appearance has been entered in a Testamentary Suit all parties must, within eight days, file Affidavits of Scripts. The Rules in Contentious Business respecting Affidavits are the following:—

Rules as to  
Affidavits in  
Contentious  
business.  
Affidavits  
drawn in first  
person.

“Every Affidavit is to be drawn in the first person, and the addition and true place of abode of every person making an Affidavit is to be inserted therein. Rule 80.

Names in Jurat

“In every Affidavit made by two or more persons, the names of the several persons making it are to be written in the Jurat. Rule 81.

Erasures or  
Interlineations.

“No Affidavit will be admitted in any matter depending in the Court of Probate any material part of which is written on an erasure, or in the Jurat of which there is any interlineation or erasure. Rule 82.

Deponent blind  
or illiterate.

“When an Affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the Registrar, Commissioner, or other person before whom such Affidavit is made, is to state in the Jurat that the Affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same, and also that such party made his or her mark thereto, or wrote his or her signature thereto in the presence of the Registrar, Commissioner, or other person before whom the Affidavit was made. Rule 83.

Before whom  
sworn.

“No Affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his Proctor, Solicitor, or Attorney, or before the Partner or Clerk of his Proctor, Solicitor, or Attorney. Rule 84.

“Proctors, Solicitors, and Attorneys and their Clerks respectively, if acting for any other Proctor, Solicitor, or Attorney, shall be subject to the Rules in respect of taking Affidavits which are applicable to those in whose stead they are acting.” Rule 85.

Time to file.

“Where a special time is limited for filing Affidavits no Affidavit filed after that time shall be used in Court, unless by leave of the Judge. Rule 86.



"In Testamentary Causes the Plaintiff and Defendant, within eight days of the entry of an appearance on the part of the Defendant, are respectively to file their Affidavits as to scripts, whether they have or have not any script in their possession. A form, No. 10, is given." Rule 30.

Affidavit of  
Scripts to be  
filed by Plaintiff  
and Defendant.

"Every Script which has at any time been made by or under the direction of the Testator, whether a Will, Codicil, Draft of a Will or Codicil, or written instructions for the same, of which the deponent has any knowledge, is to be specified in his Affidavit of Scripts, and every Script in the custody or under the control of the party making the Affidavit is to be annexed thereto, and deposited therewith in the Registry." Rule 31.

Scripts to be  
annexed to  
Affidavit.

"No party to the Cause, nor his Proctor, Solicitor, or Attorney, shall be at liberty, except by leave of the Judge or of one of the Registrars of the Principal Registry, to inspect the Affidavit as to Scripts, or the Scripts annexed thereto, filed by any other party to the Cause, until his own Affidavit as to Scripts, shall have been filed." Rule 32.

No party to  
inspect Affi-  
davit by any  
other party  
until his own  
has been filed.

Oaths and Affidavits may be taken in and for the purposes of the Court of Probate by the following persons. (A) 1, In England by the Registrars of the Court. 2, the District Registrars. 3, the Surrogates of any Ecclesiastical Court acting at the commencement of the Court of Probate Act (1857). 4, Commissioners for taking Oaths in Chancery. 5, Commissioners specially appointed by the Judge of the Court of Probate.

Oaths and  
Affidavits how  
sworn.

In England.

Affidavits and Oaths may be taken for the like purposes in those parts of the United Kingdom which are out of England by the following persons viz. 1 In Ireland by any Court, Judge, Notary Public or person lawfully authorized to administer oaths in Ireland.

In Ireland.

In Scotland by the same persons.

In Scotland.

In addition to the above,—In the Isle of Man: (1) By any Commissary, Ecclesiastical Judge or Surrogate who, at the time of the passing of the Court of Probate Act, 1857, was authorized to administer oaths in the Isle of Man (2) Any Solicitor practising in the Isle

In the Isle of  
Man.

(A) See 27th and 45th sections of the Court of Probate Act, 1857, the 30th and 32nd sections of the Court of Probate Act, 1858, the 22nd section 6 George IV. c. 87, and the 1st section 18 and 19 Vic., c. 42.

of Man whom the Judge of the Court of Probate may appoint.

**In the Channel Islands.** In the Channel Islands (1) By the persons last described (2) And any Court, Judge, Notary Public or person lawfully authorized to administer oaths in these Islands.

**In the Colonies.** Affidavits and Oaths may be taken in any part of the Colonies, Islands, Plantations and places out of England which are under the dominion of Her Majesty, by any Court, Judge, Notary Public or person lawfully authorized to administer Oaths in such Colonies, Islands, Plantations or places respectfully.

**In Foreign parts** Affidavits and Oaths may be taken in foreign parts out of Her Majesty's dominions by the following persons viz.—(1) Consuls-General. (2) Consuls. (3) Ambassadors. (4) Ministers. (5) Envoys. (6) *Chargés d'Affaires*. (7) Secretaries of Embassy. (8) Secretaries of Legation. (9) Vice Consuls (10) Acting Consuls. (11) Pro Consuls. (12) Consular Agents. But if there are no such persons as these, then (13,) Foreign local Magistrates or other persons having authority to administer an Oath; but it must appear, in the latter case, on the Affidavit or Oath, that there were no such persons as those before designated at the place where the oath was administered.

### SCRIPTS.

**What is a Script** In the form of Affidavit of Scripts given in the Contentious Rules, Scripts are mentioned as "Paper or Parchment writing, being or purporting to be or having the form or effect of a Will or Codicil or other testamentary disposition." In Affidavits of Scripts used in the Prerogative Court the words "Script, Scroll, Paper, Parchment or other writing, being, or purporting to be or having the face, force, form or effect of a Will or Codicil" were used. Rule 31 in the Contentious Rules shows that a Script is a Testamentary Paper "which has at any time been made by or under the direction of the Testator;" If the Paper of which the Testator had knowledge be lost, a copy thereof, or any existing paper embodying the contents then becomes a Script, that is to say, it should be filed annexed to the Affidavit of Scripts, although the Testator had no knowledge of such Paper. Sometimes a Will is propounded as contained in an Affidavit or Declaration in a Suit. These are not annexed to the Affidavit of Scripts, but, until proved, they

are officially regarded as the "Script" and when proved as the "Will."

If the Scripts are in the possession of the party making the Affidavit of Scripts, they should be annexed thereto. Scripts annexed to Affidavit.  
 Every Script should be marked with a figure or letter in a conspicuous place for the purpose of facilitating reference thereto and for identification. Scripts should be marked.

If the Script has been taken into the Principal or a District Registry before the Suit commenced, the words "now remaining in the Principal Registry of this Court" or "now remaining in the District Registry at \_\_\_\_\_" should be used in the Affidavit. Scripts in Principal Registry or District Registry.

If the Will has been brought into the Principal Registry, and not proved, the Clerk of the Papers should be so informed in order that he may obtain the Custody of it. If the Will has been taken into a District Registry a Letter should be written to the Registrars of the Principal Registry stating that a Cause is pending—that the Will is in the District Registry at \_\_\_\_\_ and requesting the District Registrar to direct it to be sent up for the purpose of the Suit. Postage stamps should be enclosed.

If the time for filing the Affidavit of Scripts has elapsed, a Summons for leave to file, notwithstanding the time has elapsed, may be extracted, or for further time before it has elapsed. See page 103. Time to file Affidavit of Scripts.

A Summons may be taken out to show cause why an Affidavit of Scripts should not be waived for various reasons. Waiving Affidavit of Scripts.

Affidavits of Scripts are filed by all parties appearing in a Testamentary Suit, whether Plaintiff, Defendant, Party cited to see proceedings or Intervener. If the party has no Script his Affidavit must be to that effect. Affidavits of Scripts filed by all parties.

If either party has in his possession or custody a Script which he has not produced, or the absence of which he has not explained the Court will direct the party to bring in a further and fuller Affidavit of Scripts. Further and fuller Affidavit may be required.

A Summons to show cause why a party should not file a further and fuller Affidavit of Scripts may be obtained.

Where both parties are out of time in filing Affidavits one Summons may be taken for Plaintiff and Defendant to file Affidavits. Each signing a consent. Both parties out of time.

Scripts should be annexed together and in such a manner Mode of annexing folding and endorsing.

that every part may be visible—the mode adopted is to run a thin loose string through the top left corner of each script about an inch and a half from the top and side and in the same way annex the Affidavit thereto. Scripts so annexed, however numerous, or written on whatever kind of paper, large or small, may be easily seen.

The Affidavit should be folded lengthwise and endorsed with the style of the Cause and the name of the deceased at the top and somewhat lower down the words “Affidavit of Scripts of (the Plaintiff or Defendant) sworn

” with the name and address of the Practitioner at the bottom.

Fees.

The fee for filing each Script is 5s. and 2s. 6d. for the Affidavit.

Pencil writing  
on Scripts.

“When any pencil Writing appears on a Will, Script, or other document filed in the Registry, a fac simile copy of the Will, Script or other Document or of the pages or sheets thereof, containing the pencil writing must also be filed with those portions written in red ink which appear in pencil in the original. Such copy must be examined by an Examiner in the Registry” (Rule 75.)

The fee for filing this Copy is 1s.

If the Document be long a copy of those portions only on which the pencil writing appears is required.

### FORM OF AFFIDAVIT OF SCRIPTS.

IN HER MAJESTY’S COURT OF PROBATE.

A. B. v. C. D.

I,  $\left\{ \begin{array}{c} \text{A. B.} \\ \text{or} \\ \text{C. D.} \end{array} \right\}$  of \_\_\_\_\_ in the County of \_\_\_\_\_

party in this cause, make oath and say, that no paper or parchment writing being, or purporting to be, or having the form or effect of a Will or Codicil, or other testamentary disposition of E. F \_\_\_\_\_, late of \_\_\_\_\_ in the County of \_\_\_\_\_ deceased, the deceased in this cause, has at any time, either before or since his death, come to the hands, possession or knowledge of me, this deponent, save and except the true and original last Will and Testament of the said deceased, now remaining in the Principal Registry of this Court (or hereunto annexed, or as the case may be), the said Will bearing date the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, (or as the case may be), also save

Form of  
Affidavit of  
Scripts.

and except (here add the dates and particulars of any other testamentary papers of which the deponent has any knowledge).

Sworn at  
on the 186                      day of } Signed, A. B.

Before me

(person authorized to administer Oaths under the Act.)

“N.B.—All papers answering the description given in Rule 31, which are in the possession, or under the control of the party making the Affidavit, should be particularly described therein, and, if possible, annexed thereto, and brought into the Principal Registry. If any such Papers are known to be in the possession, or under the control of any other person, the description of such papers, and the name and address of such other person should also be set forth.” Contentious Rules.

## FORM OF AFFIDAVIT BY PARTY HAVING NO SCRIPT.

IN HER MAJESTY'S COURT OF PROBATE.

A. B. v. C. D.

Affidavit of  
party having  
no Script.

I, { A. B. }  
          or  
          { C. D. }                      of                      (party in this Cause),

make oath and say that no paper or parchment writing, being or purporting to be, or having the form or effect of a Will, Codicil, or other Testamentary Disposition of late of (the deceased in this Cause), has at any time either before or since his death, come to the hands, possession, or knowledge of me this deponent.

Sworn at                      on } Signed,  
the            day of            186 } A. B.

Before me

(person authorized to administer Oaths under the Act.)

## INCIDENTAL PROCEEDINGS.

After the Affidavits of Scripts have been filed, the next step usually taken in a Testamentary Cause is to file the Declaration, but steps are occasionally taken in such causes for which there is no specified time. For instance, Motions for Citations to see proceedings, against the

Incidental  
Proceedings.

Heir-at-Law, or persons interested in real Estate, or such Citation against others.—Motion to obtain Administrator pendente lite, or Receiver of Real Estate—Application for Inventory—For security for Costs, &c., &c.

Before speaking of Pleadings a brief allusion to these incidental matters may be desirable.

The Practitioner will remember what has been said under the head of “Citation to see proceedings” as to the time for extracting such Citation, and judge of the expediency of extracting one (if required). at this stage of the proceedings. See Page 87.

Summons  
against Heir-at  
Law or person  
interested in  
real Estate.

If the Heir at Law, or person interested in real Estate, be already before the Court as next of kin or otherwise, a Summons may be extracted to show cause why he should not also appear as Heir at Law, or as interested in real Estate (as the case may be).

Administrator  
pendente lite.  
Receiver of  
Real Estate.

The Court may be moved to appoint an Administrator pendente lite, or a Receiver of real Estate at this or a subsequent period of the proceedings.

Summons for  
Inventory.

An Inventory may be required at this or a future time during the proceedings.

“In contentious business Inventories and not merely declarations of the personal estate and effects of the deceased, are to be filed, unless by order of the Judge or of a Registrar.” Rule 76.

Security for  
costs.

The fee for filing an Inventory is 5s.

A Summons may at any time be taken out to show cause why Security for Costs should not be given.

Application by Motion or Summons may now or hereafter be made for leave to intervene.

These are incidental proceedings in a Testamentary Cause. Leaving them, the ordinary proceedings are as follows.

### DECLARATION.

Declaration  
when filed.

After Affidavits of Scripts have been filed the next step commonly taken in a Testamentary Cause is to file the Declaration. It is sometimes filed before the Affidavits of Scripts are filed. By Rule 34, the party whose duty it is to file the Declaration cannot be compelled to file it until after the other party has filed his Affidavit of Scripts.

Who to deliver  
Declaration.

“In ordinary cases it belongs to the Plaintiff to deliver the Declaration, and to the Defendant to deliver the Plea, but the party propounding the alleged last Will and Testa-

ment of the deceased shall, in all cases, even if Defendant in the Suit deliver the Declaration, and the party opposing the same deliver the Plea. Rule 33.

“The Declaration is to be delivered to the opposite party and a copy thereof filed in the Registry on one and the same day, and within one month from the entry of appearance by the Defendant, but the party whose duty it is to bring in the Declaration, shall not be compelled to deliver it, or to file a copy thereof until the expiration of eight days after the other party has filed his Affidavit as to Scripts.” Rule 34.

Declaration delivered and copy filed on same day.

“In case of proving a Will in solemn form of law, the party whose duty it is shall declare, in the form No. 6, or as near thereto as the circumstances of the case admit.”

Form of Declaration.

Rule 35.

In place of Rule 40 of the Rules and Orders in Contentionous Business, and of the form No 8, referred to in Rule 38 of the Rules and Orders, it is ordered that:—

Amended Rules and Orders dated 29th December, 1865.

“If one party propounds a Will or Testamentary Script in his Declaration, and the adverse parties, or either of them, desire to propound another Will or Testamentary Script, the adverse parties must, with their pleas, deliver to the opposite party and file in the Registry a Declaration propounding such other Will or Testamentary Script, to which the opposite party shall plead; and the form of Declaration, and the Pleadings and proceedings arising therefrom, shall be the same as directed by the Rules and Orders of the Court in respect to the original Declaration delivered and filed in the Cause.” Rule 40.

Each party may deliver declaration.

“Either party desiring to alter or amend a Pleading, must apply to the Court on Motion, but if the alteration or amendment required be merely verbal, or in the nature of a clerical error, it may be made by Order upon Summons.” Rule 42.

Amending declaration.

“When a Pleading has been ordered to be altered or amended, the time for filing the next Pleading shall commence from the time of the Order having been complied with.” Rule 43.

Time for filing next Pleading.

“If a party in any Cause fail to deliver or file a copy of the Declaration, Plea, or other Pleading, within the time specified in these Rules, or within such extended time as may have been allowed, the party to whom such Declaration, Plea, or other Pleading ought to have been de-

Failing to deliver or file copy.

livered shall not be bound to receive it, and the copy of such Declaration, Plea, or other Pleading shall not be filed, unless by direction of the Judge, or by order of the Registrars of the Principal Registry, obtained on Summons. The expense of every application for such direction or Order shall fall on the party who has caused the delay, unless the Judge or Registrar shall otherwise direct" Rule 44.

Declaration in default.

"In case of proceedings in default the Plaintiff shall file his Declaration in the Registry, within eight days from the last day allowed in the Citation for the appearance of the Defendant." Rule 36.

Declaration how written, folded, endorsed, &c.

The Declaration should be on foolscap paper, folded lengthwise. The correct style of the Cause should be endorsed thereon, and the word "Declaration" and name and address of the Practitioner.

Style of cause.

In the Probate Court, Causes are styled—if there be only one Plaintiff and Defendant, *A. v. B.*—if two Plaintiffs and Defendants, *A. & B. v. C. & D.*,—if several, *A. & others v. B.* and others.—If the appearance be by Guardian, *A.*, by his Guardian *v. B.*—If parties have been cited to see proceedings, *A. v. B. & C.* and others cited to see proceedings.—If Interveners, *A. v. B. & C.* and others intervening.

Notice to plead.

The Notice to Plead should be written at the end of the Copy of the Declaration which is filed, and not outside, as that is required for the endorsement and official notes.

Declaration time.

"The time fixed in these Rules for bringing in Pleadings, and for other proceedings, shall in all cases be exclusive of Sundays, Christmas Day, and Good Friday. Rule 91.

Service of Pleadings, &c.

"It shall be sufficient to leave all Pleadings, and other instruments, personal service of which is not expressly required by these Rules and Orders, at the address furnished, within three miles of the General Post Office, by the Plaintiff and Defendant respectively." Rule 28.

Fee.

The Fee for filing the Declaration is 5s.

Form of Declaration.

## FORM OF DECLARATION.

IN HER MAJESTY'S COURT OF PROBATE.

The day of 186

A. B. (or A. B. by C. D. his Proctor, Solicitor, or Attorney), saith that E. F., late of deceased, who died on or about the day of at being of the age of twenty-one years and upwards, made



his last Will and Testament with Codicils thereto, bearing date, to wit, the said Will on the day of 18, the first of the said Codicils on the day of 18, (and so on for any other Codicils), and in the said Will appointed the said A. B. sole Executor (or as the case may be), that the said Will and Codicils respectively, after having been reduced into writing, were signed by the said Testator (or signed by G. H. in the presence and by direction of the Testator, or signed by the Testator who acknowledged his signature thereto, (or as the case may be), in the presence of two Witnesses present at the same time, and who subscribed the same in the presence of the said Testator, and whose names severally appear upon the said Will and Codicils; and that the said Testator was at the time of the execution of the said Will and Codicils respectively, of perfect sound mind, memory and understanding.

(Notice, where the Defendant appears.)

The Defendant must plead hereto in eight days from the date hereof, otherwise the Plaintiff will proceed to obtain Probate of the said Will and Codicils (or as the case may be.)

### PLEA.

A Plea is an answer to a Declaration.

"A party desirous of Pleading must deliver his Plea to the other party within eight days after the service of the Declaration, and file a copy thereof in the Registry on one and the same day, otherwise he will not be permitted to plead, except with the permission of the Judge, or of the Registrars of the Principal Registry in the absence of the Judge. A form of plea is given No. 8." Rule 38.

"In all cases a party opposing a Will may, with his Plea, give notice to the party setting up the Will that he merely insists upon the Will being proved in solemn form of Law, and only intends to cross examine the Witnesses produced in support of the Will, and he shall thereupon be at liberty to do so, and shall be subject to the same liabilities in respect of Costs as he would have been under similar circumstances according to the practice of the Prerogative Court." Rule 41.

Notice that party only intends to cross examine Witnesses.

"Either party desiring to alter or amend a Pleading must apply to the Court upon Motion; but if the alteration or amendment required be merely verbal or in the nature

Amending Plea.

of a clerical error, it may be made by order upon Summons." Rule 42.

Time for filing  
next plea.

"When a Pleading has been ordered to be altered or amended, the time for filing the next Pleading shall commence from the time of the order having been complied with." Rule 43.

Failing to  
deliver copy.

"If a party in any Cause fail to deliver or file a copy of the Declaration, Plea, or other Pleading within the time specified in these Rules, or within such extended time as may have been allowed, the party to whom such Declaration, Plea, or other Pleading ought to have been delivered shall not be bound to receive it. And the copy of such Declaration, Plea, or other Pleading shall not be filed, unless by direction of the Judge, or by order of the Registrars of the Principal Registry, obtained on Summons. The expense of every application for such direction or order shall fall on the party who has caused the delay, unless the Judge or Registrars shall otherwise direct." Rule 44.

## AMENDED RULES AND ORDERS AS TO PLEA.

In place of Rule 40 of the Rules and Orders in Contentious Business, and of the Form No. 8 referred to in Rule 38 of the said Rules and Orders, it is ordered, that—

"If one party propounds a Will or Testamentary Script in his Declaration, and the adverse parties, or either of them, desire to propound another Will or Testamentary Script, the adverse parties must, with their Pleas, deliver to the opposite party and file in the Registry a Declaration propounding such other Will or Testamentary Script, to which the opposite party shall plead; and the Form of Declaration, and the Pleadings and proceedings arising therefrom, shall be the same as are directed by the Rules and Orders of this Court in respect to the original Declaration delivered and filed in the Cause." Rule 40.

"The party or parties pleading to a Declaration propounding a Will or Testamentary Script shall be allowed to plead only the Pleas hereunder set forth, unless by leave of the Judge, to be obtained on Summons." Rule 40A.

- "1. That the paper writing bearing date, &c., and alleged by the Plaintiff [or Defendant] to be the last Will and Testament [or Codicil to the last Will and Testament] of A. B., late of, &c., deceased,

was not duly executed according to the provisions of the Statute 1 Vict., c. 26, in manner and form as alleged.

2. That A. B., the deceased in this Cause, at the time his alleged Will [or Codicil] bears date, to wit, on the, &c., was not of sound mind, memory, and understanding.
3. That the execution of the said alleged Will [or Codicil] was obtained by the undue influence of C. D. and others acting with him.
4. That the execution of the said alleged Will [or Codicil] was obtained by the fraud of C. D. and others acting with him.
5. That the deceased at the time of the execution of the said alleged Will [or Codicil] did not know and approve of the contents thereof."

"Any party pleading the last of the above pleas shall therewith (unless otherwise ordered by the Judge) deliver to the adverse parties and file in the Registry particulars in writing, stating shortly the substance of the case he intends to set up thereunder; and no defence shall be available thereunder which might have been raised under any other of the said pleas, unless such other plea be pleaded therewith."

The fee for filing the Plea is 5s.

Fee.

## PARTICULARS OF PLEA—FURTHER PLEADING.

Summonses may be extracted to show Cause why particulars of Pleas should not be filed. Pleas have several times been drawn adopting the words "and others" from the above rules. Summonses have consequently been taken out for "particulars of Pleas" to show who were meant and intended by the Words "and others."

Particulars of Pleas

"Either of the parties may, within 8 days of the service upon him of the last previous Pleading, give in a Repliation, Rejoinder, Surrejoinder, Rebutter or Demurrer as he may be advised. The form of the Declaration and Plea will it is presumed, be a sufficient guide as to the form of any further Pleadings." Rule 39.

Further Pleadings.

The fee for filing every pleading is 5s.

Fees.

The Plea and all subsequent pleadings should be written folded and endorsed in the same manner as the Declaration.

Pleadings written, folded, and endorsed.

Form of Ples.

## FORM OF PLEA.

IN HER MAJESTY'S COURT OF PROBATE.

The            day of            18  
 G. H. (or G. H. by S. Z. his Proctor, Solicitor or Attorney) saith, that the paper Writing bearing date the  
                                  day of            18            and alleged by the Plaintiff  
 to be the last Will and Testament of A. B.            late of  
                                  in the County of            deceased, (or the first or  
 any other Codicil thereto) was not executed according to the  
 provisions of 1 Vict. Cap. 26 (or that A. B. the deceased in  
 this cause at the time his alleged Will or Codicil) bears  
 date to wit, on the            day of            18            was not of  
 sound mind, memory, and understanding (or any other  
 averment in opposition to the Will or Codicil propounded.)

## DEMURRER.

Demurrer.

Demurrers are subject to the same rules as pleadings.

"All Demurrers are to be set down for Hearing in the same manner as causes, and will come on in their turn with other causes to be heard by the Judge without a Jury." R. 56.

The fee for filing a Demurrer is 5s.

Setting down and Notice Papers may be obtained from the Stationers. The fee for setting down is 5s. and 1s. for the Notice. Hearing fees are to be paid.

## THE ISSUE,

The Issue.

"Within fourteen days after the delivery of the last Pleading in the Cause, the party who brought in the Declaration is to deliver to the other parties in the cause the Issue in the Form No. 11, or in a form as near thereto as the circumstances of the case will admit, but the Issue is not to be filed." Rule 46.

## FORM OF ISSUE.

Form of Issue.

IN HER MAJESTY'S COURT OF PROBATE.

The            day of            186  
 A. B. v. C. D.  
 A. B. by P. Q. his Proctor, Solicitor or Attorney (or in person) did deliver to wit, on the            day of            18  
 to the said C. D. his Declaration in the words and figures following

(Here insert Declaration at length.)

Whereupon the said C. D. did deliver, to wit, on the

(Add any further Pleadings.)

NOTICE AS TO MODE OF TRIAL.

Notice as to  
Mode of Trial.

FORM OF NOTICE.

Form of Notice  
as to mode of  
Trial.

Dated this                      day of                      18

or E. F.

Proctor, Solicitor, or Attorney

for  $\left\{ \frac{A. B.}{C. D.} \right\}$

## MOTION FOR DIRECTIONS AS TO THE MODE OF TRIAL.

The mode of  
Trial.

“In each case the Judge shall after hearing the parties upon Motion in Court, direct in what mode the cause shall be tried or heard.” Rule 49.

It is the practice to state in the Prayer the mode in which it is desired that the cause should be tried.

If the Plaintiff and Defendant differ as to the mode of trial a Counter statement may be filed by the party objecting to the Motion.

## THE RECORD.

The Record.

“After the direction of the Judge has been obtained as to the mode in which the Cause is to be tried or heard, the party who delivered the Declaration shall within 8 days, deposit the Record of the Cause in the Registry. The Record is to conclude with a Statement of the mode in which the Judge has directed the Cause to be tried or heard as in the Form No. 13.” Rule 50.

Record on  
Parchment.

The Record is written on Parchment. No particular form is required. It may be on one or several skins.

Particulars of  
Plea.

The fee for depositing the Record is £1.

When particulars of Pleas have been filed they are not embodied in the Record but written on paper and appended thereto.

## FORM OF RECORD.

Form of Record

### IN HER MAJESTY'S COURT OF PROBATE.

The            day of            18     .

A. B. v. C. D.

A. B., by E. F., his proctor, solicitor, or attorney, (or in person,) having cited C. D. to appear in support of any interest he may have in the estate and effects of G. H. (or according to the terms of the citation), (or A. B., by E. F., his proctor, solicitor, or attorney, (or in person,) having warned the caveat entered by C. D. in the Estate and Effects of G. H.,) late of            , deceased who died on or about the            day of            18     , at            , the said C. D. appeared thereto personally, (or by his proctor, solicitor, or attorney): Whereupon            to wit, on the            day of            18     did deliver his declaration to the said            in the words and figures following:

(Here insert Declaration at length.)

Whereupon the said                      did deliver, to wit, on the  
day of                      to the said                      , his plea in the words and  
figures following :

(Here insert at length Plea and any further Pleadings.)

Therefore                      claimed that the cause should be tried  
as the Court should direct.

Whereupon the Judge did order, as follows :

(Here set forth the direction as to the mode of hearing or  
trial.)

Only such por-  
tions of the  
order as direct  
the mode of trial  
need be set out.

## RECORD

### IN CASE OF PARTY CITED NOT APPEARING.

“ In default of the Appearance of Defendants, being parties Cited, a Record as in Form No. 14, or as near thereto as can be, shall be deposited in the Registry.” Rule 51.

Record in  
default of  
Appearance.

## FORM OF RECORD.

### IN HER MAJESTY'S COURT OF PROBATE.

The                      day of                      18

A. B. v. C. D.

A. B. by E. F., his Proctor, Solicitor, or Attorney, (or in person), having cited C. D. to appear in support of any interest he may have in the estate and effects of G. H. (or according to the terms of the citation) late of deceased, who died on or about the                      day of

18 , at

, the said C. D. did not in anywise appear thereto ; Whereupon, in default of appearance of the said C. D., the said A. B. did file his declaration in the Principal Registry in the words and figures following :—

(Here insert Declaration at length).

Therefore A. B. claimed that the Cause should be tried  
as the Court should direct.

Whereupon the Judge did order as follows :—

(Here set forth the direction as to the mode of trial).

### SETTING DOWN THE CAUSE FOR TRIAL OR HEARING.

“ The party who has deposited the Record shall set down the Cause for Trial or Hearing and upon the day on which he so sets it down, shall give Notice of his having done so to each party for whom an Appearance has been entered, but if he delay setting down the Cause for Trial or Hearing for the space of one month after the Court has directed the

Who is to set  
cause down.

mode in which the questions at Issue shall be tried or heard, either of the other parties may set the Cause down for Trial or Hearing, and give a similar Notice. A Copy of every such Notice shall be filed in the Registry, and the Cause, unless the Judge shall otherwise direct, shall come on in its turn." Rule 54.

Ten days notice  
of Trial.

"No cause is to be called on for Trial or Hearing until after the expiration of 10 days from the day when the same has been set down for Trial or Hearing, and Notice thereof has been given, save with the written consent of all parties to the suit previously filed in the Registry." Rule 55.

A setting down paper and notice paper may be obtained from the Stationers.

The fee for setting the Cause down is 5s. The notice is 1s.

### QUESTIONS FOR THE JURY.

Questions for  
the Jury.

By whom pre-  
pared.

Copy served.

"If the Cause be directed to be tried by a Jury, the Questions at Issue between the parties are to be prepared by the party declaring from the Record, and settled by one of the Registrars of the Principal Registry. A form is given, No. 15, and a copy of such Questions so settled is to be served on all the parties to the Cause" Rule 52.

Alter or amend.

"After the Questions have been so settled any party to the Cause shall be at liberty to apply to the Judge on Summons to alter or amend the same, and his decision shall be final and binding on the parties" Rule 53.

The draft questions for the Jury are brought to the Clerk of the Papers who will therewith receive the fee for settlement. The fee for settling questions of fact to be tried by a Jury is 10s.

Copy on parch-  
ment filed.

After the questions have been settled by a Registrar they may be obtained from the Clerk of the Papers. A copy of the questions on Parchment must be filed. It is required to be annexed to the Record and should be in the Registry some days before the Trial.

The fee for filing Parchment copy Questions as settled is 2s. 6d.

### FORM OF QUESTIONS FOR THE JURY.

IN HER MAJESTY'S COURT OF PROBATE.

A. B. v. C. D.

Whereas A. B. the { Plaintiff, }  
                                  { Defendant, } avers and C. D., the

Form of ques-  
tions for the  
Jury.



{ Defendant, } denies that (here set out each question at  
 { Plaintiff, } issue between the parties, and repeat the  
 form as often as may be necessary ; and conclude.)

Therefore let a Jury come,

At the time of hearing the Cause the Judge may direct  
 any question to be submitted to a Jury to be reduced into  
 Writing.

The fee for Reducing into writing any question to be  
 submitted to a Jury under the Judge's direction is £1. 0s. 0d.

## NOTICE TO ADMIT AND PRODUCE.

“Any party in a Cause may call upon the other party <sup>Admission of Documents.</sup>  
 or parties, by Notice in writing in the form given No. 20,  
 to admit any document, saving any just exceptions, and in  
 case of refusal or neglect to admit the same, the Costs of  
 proving the document shall be paid by the party so  
 neglecting or refusing, whatever the result of the cause  
 may be, unless at the trial or hearing the Judge shall  
 certify that the refusal to admit was reasonable, and no  
 costs of proving any document shall be allowed as Costs in  
 the Cause, except in cases where the omission to give the  
 notice was, in the opinion of the Registrar a saving of  
 expense.” (Rule 72.)

Copies of the Notices are filed in the Registry.

The Fee is 1s. for each Notice.

## NOTICE TO ADMIT DOCUMENTS.

IN HER MAJESTY'S COURT OF PROBATE.

A. B. v. C. D.

Take Notice, that the { Plaintiff } in this cause pro-  
 { Defendant }  
 poses to adduce in evidence the several documents here-  
 under specified, and that the same may be inspected by the  
 { Defendant } at on between the hours of  
 { Plaintiff }

and the { Defendant } is hereby required, within  
 { Plaintiff }  
 48 hours from the last-mentioned hour, to admit that such  
 of the said documents as are specified to be originals were

Form of Notice  
 to admit Docu-  
 ments.

respectively written, signed, or executed as they purport respectively to have been, that such as are specified to be copies are true copies, and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively, saving all just exceptions to the admissibility of all such documents as evidence in the cause. Dated, &c.

To  $\left\{ \begin{array}{c} \text{A. B.} \\ \text{C. D.} \end{array} \right\}$  or to E. F., proctor, or solicitor, or attorney,  
for  $\left\{ \begin{array}{c} \text{Defendant.} \\ \text{Plaintiff.} \end{array} \right.$   
(Signed)  $\left\{ \begin{array}{c} \text{C. D.} \\ \text{A. B.} \end{array} \right\}$  or G. H., proctor, or solicitor, or attorney for  $\left\{ \begin{array}{c} \text{Plaintiff.} \\ \text{Defendant.} \end{array} \right.$

[Here describe the Documents. The same form may be employed in describing the Documents as is now in use in the Common Law Courts.]

## EVIDENCE.

Evidence by  
Commission.

A Commission to examine Witnesses may be obtained by Motion or on Summons.

The Commission is drawn by the Practitioner, and will be settled by a Registrar if required. It is written on Parchment.

No Commission is required for the Examination of a Witness within the jurisdiction of the Court.

The fee for a Commission is £1. A præcipe is required.

Examination  
before District  
Registrar or  
other person.

When a Witness is ill, or unable to attend to be examined in Court, a Summons may be extracted to show cause why he should not be examined before a District Registrar, Barrister, Solicitor, or other person. "An Order for *vivâ voce* examination of Witness within the jurisdiction" is then made. This Order enables the parties to cross-examine and further examine the Witness. The examination is to be certified under the hand and seal of the Examiner.

Subpœna for  
Witnesses.

"Every Subpœna shall be written or printed on parchment, and may include the names of any number of Witnesses. The party, or his Proctor, Solicitor, or Attorney, shall take it, together with a præcipe to the Registry,

and there get it signed and sealed, and deposit the præcipe. To be signed and sealed.  
Forms are given, Nos. 16, 17, 18 and 19." (Rule 71.)

A separate præcipe is required for each Subpœna.

The Fee for each Subpœna is 2s. 6d.

For taking the evidence of one or more witnesses before the Registrar, and Fees for taking Evidence.  
within three miles of the General Post

Office, for each day ... 3 3 0

If beyond that distance, for each day in addition to travelling expenses ... 5 5 0

If for part of a day only, such smaller fee as the Registrar in his discretion shall think proper.

Commissioner or Examiner appointed by order to take the examination of Witnesses, for each day's attendance, besides travelling expenses ... 3 3 0

### SPECIAL JURY PANEL.

If the Cause is to be tried by Special Jury, the Practitioner must obtain an office copy of the Order on Motion, directing the mode of Trial, and take such copy to the sitting Registrar, who will direct a copy thereof to be made to which the Judge's signature will be attached. Special Jury Panel. How obtained.

This copy must be taken to the Sheriff's Office, who will thereupon obtain the Special Jury.

The copy of the Panel supplied from the Sheriff's Office must be filed with the Clerk of the Papers as soon as obtained. Copy filed.

The fee for the Order under the signature of the Judge for a Special Jury is 5s.

The fee for filing the Panel is 2s. 6d.

### HEARING OR TRIAL.

About ten days before the commencement of every Term a List of all Causes set down for Hearing or Trial is prepared. This constitutes the Business for the Term. No other Causes are taken except by special application. Hearing by Court itself.

The Causes for hearing by the Court itself are usually taken at the commencement of the Term.

Some days before a Cause comes on for hearing or trial Papers looked up.

the papers are looked up in the Registry and compared by the Clerk of the Papers with the Minutes, preparatory to being sent to the Court. If there be any paper required for the hearing of the Cause which is not in the custody of the Clerk of the Papers, the Practitioner should attend in the Registry and give directions respecting it. For instance, the Will may have been already proved, in that case it is in the custody of the Record Keepers, who must be instructed to attend with it in Court, or papers may have been taken into a District Registry, in that case, the Registrars of the Principal Registry must be written to, requesting them to direct the papers to be sent up for the purposes of the suit.

The days of hearing will appear on the Term Card.

The days of  
Hearing.  
Trial by Com-  
mon Jury.

The days for trial by common Jury will also appear in the Term Card.

The Common Jury is obtained by the Judge's Clerk. About three weeks before Jury Causes are taken, he draws up an Order on the Sheriff of Middlesex and obtains the Judge's signature thereto. The Order is then sent to the Sheriff's Office in Red Lion Square, who issues his warrant to the Summoning Officer to summon the Jury, and a day or two before the trial comes on the Judge's Clerk sends to the Sheriff's Office for the Common Jury Panel, which is sent annexed to the Order, and also the slips of parchment for the Ballot Box, with the names, addresses, and addition of the Jurors.

Trial by Special  
Jury.

Days are appointed in the Term Card for the hearing of Jury Causes, but the Judge generally directs the Practitioners to attend before him for the purpose of selecting the days for the hearing of the Special Jury Causes. Notice to attend the Judge is sent from the Registry.

Conduct of the  
cause in Court.

"The hearing of the Cause shall be conducted in Court, and the Counsel shall address the Court, subject to the same rules and regulations as now obtain in the Courts of Common Law." Rule 57.

Fees.

On the hearing or trial of a Cause :

From the Plaintiff ...	...	...	1	0	0
From the Defendant ...	...	...	0	15	0

If the hearing or trial continues more than  
one day, for each day :

From the Plaintiff ...	...	...	0	10	0
From the Defendant ...	...	...	0	10	0

Entering on the record the finding of the Jury or the decision of the Judge, to be paid by the successful party ...	0	5	0
Entering special verdict, if five folios of seventy-two words or under, to be paid by the successful party ...	0	5	0
If exceeding five folios, for every additional folio of seventy-two words ...	0	1	0
Entering decree or order in pursuance of judgment of an extinct Court ...	0	10	0
Entering any final order or decree made with consent of parties by the Judge or by one of the Registrars ...	0	10	0
Entering the final decree in a Cause, or order dismissing same, to be paid by the successful party ...	0	10	0
Entering order for the examination of witnesses ...	0	5	0
Entering any order or decree in the Court book, not otherwise specified...	0	2	6

The fees for the hearing of a Cause are payable by all parties who are heard. They are received by the Clerk of the Papers in the Registry, and should be sent as soon as the Cause has been heard.

### TRYING ISSUE AT ASSIZES.

Whenever an issue is directed by the Court to be tried at the Assizes the mode of procedure is regulated by 8 and 9 Vict., c. 109, s. 19, and the form to be followed is given in Schedule 2 annexed to that statute.

The record consequently will not issue from the Court of Probate, nor will any Subpœnas be signed by the Registrars to compel Witnesses to attend at the Assizes, but the Subpœnas will issue from the Court in which the Writ of Summons issued out, as is the case when an issue is directed by a Court of Equity.

The details of the proceeding appear to be as follows :

Draw the Issue in the form given by the 8th and 9th Vic., cap. 109: have it settled by Counsel when necessary. Deliver copy for perusal to the adverse party.

When returned approved engross it on parchment.

Prepare a Præcipe for Writ of Summons, and take it with the Engrossment to the Master's Office of the Court

Trial at Assizes

in which the Case is to be tried, where, on lodging Præcipe and paying 5s., the Master's Clerk will seal it with the Seal of the Court.

Then make a fair copy thereof and endorse thereon a Notice of Trial for the particular Assizes, and deliver the same to the opposite Attorney ten days before the Commission day.

Send the Record, which is an exact copy of the Issue, on parchment, to the Agent in the Country, who will enter it with the Associate, and the Case will come on its turn.

The Subpoenas should be issued from the same Court and tested in Term time.

The Writ of Summons may be issued in either of the Superior Courts, and the other steps be taken there.

Witness ill.

If, in consequence of illness or any other cause, it be necessary to examine a Witness before the Trial the Order for the Examination must be obtained from the Court in which the Cause is to be tried; indeed, when a Cause is directed to be tried at Assizes no further step is taken in the Principal Registry until after the trial, except directing the Testamentary Papers to be sent to the nearest District Registry for the purpose of being attended with at the trial; for this purpose application must be made by letter to the Registrars of the Principal Registry. The consent of the opposite party must be obtained that the Papers may be sent by post, otherwise they will have to be taken to the Court by special Official Messenger. After the Case has been tried, the Record, with Postea endorsed, and Testamentary Papers, must be returned to the Principal Registry and Motion made for the Grant.

Testamentary  
Papers sent.

Consent  
required.

Motion for  
Grant.

## ENTRY ON THE RECORD.

Entry on the  
Record.

“After the conclusion of the Trial or Hearing the Registrar shall enter on the Record the finding of the Jury or the decision of the Judge, in a form corresponding as near as may be with those given, Nos. 25 and 26, and shall sign the same.” Rule 58. The forms are—

"AFTERWARDS, on the \_\_\_\_\_ day of \_\_\_\_\_

[illegible]

Entry on the  
Record of a  
verdict.

parties, upon their oath say, that (state the affirmative or negative of the issue, as found for the Plaintiff or Defendant, and in the terms adopted in the Questions for the Jury).

(If there be several Issues joined and tried, then say) as to the first Issue within joined, upon their oath say that (here state the affirmative or negative of the Issue, as found for Plaintiff or Defendant) and as to the second Issue within joined, the Jury aforesaid, upon their oath say, &c. (so proceed to state the finding of the Jury on all the Issues); Whereupon the Judge decreed (here set forth the tenor of the decree)."

(Signed) X. Y., Registrar.

"AFTERWARDS, on the 18<sup>th</sup>, before the Judge of Her Majesty's Court of Probate, come the parties within mentioned, by their respective Attorneys (or as the case may be) within mentioned; Whereupon the Judge decreed (here insert the tenor of the decree)."

Entry on the  
Record of a  
Judgment.

(Signed) X. Y., Registrar.

The Record with the Entry thereon is not given out to the Practitioner, but remains in the Registry.

Record not  
given out.

### NEW TRIAL.

"An application for a new trial of an Issue tried before a Jury may be made to the Court by Motion within fourteen days from the day on which the Issue was tried if the Court be then sitting, if not, on the first Motion day after the expiration of the fourteen days" Rule 59.

New Trial.

### REHEARING.

"An Application for a Rehearing of a Cause heard before the Judge, without a Jury, and in which Evidence has been given *vivâ voce*, may be made by Motion within fourteen days from the day on which the same was heard, if the Court be then sitting, if not, on the first Motion day after the expiration of the fourteen days" Rule 60.

Rehearing.

### APPEAL.

"Application for leave to Appeal against any Interlocutory Decree or Order of the Court of Probate, must be made within a month of the delivery of the Decree or Order appealed from, or within such extended time as the Judge

Appeal.

shall direct, and notice of such application must be given to the party in whose favour such Order or Decree has been made and filed in the Registry. A form of Notice is given No. 29" Rule 87.

Parties may proceed notwithstanding Notice of Appeal.

"Parties may proceed to carry into effect the decision of the Court of Probate notwithstanding any Notice of Appeal or of application for leave to Appeal, unless the Judge shall otherwise order; and the Judge may order the execution of his Decree or order to be suspended upon such terms as he sees fit" Rule 88.

### NOTICE OF APPEAL.

A. B. v. C. D.

Notice of Appeal.

Notice is hereby given that the { Defendant, } in a suit lately depending in Her Majesty's { Plaintiff, } Court of Probate, entitled A. B. v. C. D. has, in due time and place appealed against a certain final order or decree made in the said cause by the Right Honourable the Judge of the said Court on the            day of            18    ; whereby amongst other things, he did order and decree (here set forth the matters which are the subject of the Appeal.

(Signed)            C. D. (or G. H. proctor, solicitor, or attorney for C. D., the Defendant, or as the case may be.)

This            day of            18    .

### OBTAINING GRANT AFTER TERMINATION OF CAUSE.

After trial or hearing in Probate Court.

When a Cause has terminated by trial or hearing in the Probate Court, in order to obtain the Grant a Copy of the Registrar's minute must be procured from the Record Keepers, and proceedings must be taken to have the Executors sworn and papers transferred to the proper department in the manner described on obtaining Grant after Motion. See Page 94 to 97.

After trial at Assizes.

When a case has been tried at the Assizes it will be necessary to move the Probate Court before the Grant can be obtained. For this purpose the Record with the finding of the Jury endorsed thereon must be obtained, and a statement for Motion prepared. The Testamentary Papers also must be returned into the Principal Registry. In one case the following was the mode of obtaining the Record:—The Writ was issued out of the Court of Common Pleas



by the Plaintiff against the Defendants under the 8th and 9th Victoria (Games and Wages Act), already mentioned and served upon the Defendant's Attorney,—he entered an appearance thereto. The feigned issue was drawn by Plaintiff's Attorney, and settled by Defendant's Attorney. The Record was engrossed and lodged with the Associate at the Chester Assizes. The Cause was tried and a verdict found for the Defendants. The Associate sent up the Record to his London Agents, who upon the application of the successful parties (Defendants) endorsed the finding of the Jury on the Record, and handed it to the Defendant's Attorney on payment of £1.

After the Court has pronounced for the Will the proceedings to obtain the Grant are similar to those required after an ordinary Case for Motion.

Causes or Contentious proceedings may be discontinued at any stage of the proceedings, (either before or after they have been set down for hearing) by Order on Summons by consent or on hearing of the Summons. After discontinuance of contentious proceedings by Summons.

After the Contentious proceedings have been so discontinued, the mode of obtaining the Grant is by Registrar's Order. For further particulars see "Registrar's Orders."

## CHAPTER VII.

### INTEREST CAUSE.

#### SUIT IN FORMA PAUPERIS.

Interest Causes have been defined as "Suits in proof of Pedigree, arising where the Legal Interest of a person in the Estate of the deceased, as his nearest of kin, is denied on the grounds of illegitimacy or deficiency of evidence." Interest Cause defined.

"These questions arise either as an incident in a testamentary Cause, where the *interest* of the Contradictor to a Will is denied, or from the subject matter of an original Cause, respecting the right to Administration of an intestate's Effects."\*

\*Coote's Ecclesiastical Practice page 611.

**Rules.** Rules 61, 62 and 63 in Contentious Business apply to Interest Causes. Rule 63 merely states that "Forms of the Declaration and Plea in an Interest Cause are given, No. 7 and No. 9."

In these forms of Declaration and Plea the words "Intestate (*or as the case may be*)" appear.

**Commencement of Cause.**

This means either Intestate or leaving a Will. Whether there be a Will or not the Interest Cause would probably commence in the same way. For instance, an Executor applies for Probate, or an alleged next of kin applies for Administration, he is stopped by Caveat, the Caveat is warned, and an appearance entered. In that appearance the interest of the Defendant is set forth.

**Summons to propound Interest.**

If the Plaintiff did not admit that Interest he would take out a Summons against the Defendant to show cause why he should not propound his Interest and file his Declaration.

**Each party may deny Interest.**

"In interest causes, as heretofore, each party shall be at liberty to deny the Interest of the other, and in such case both parties may, with and subject to the permission of the Judge, adduce proof on one and the same trial of their Interests respectively" Rule 61.

**Pleading.**

"In Interest Causes the pleading of each party must show on the face of it that no other person exists having a prior interest to that of the claimant" Rule 62.

**Time to deny Interest.**

Interest Causes occasionally arise in Testamentary Causes. "In a testamentary cause after delivery of the Declaration the Interest of the party to whom it has been delivered cannot be disputed by the party declaring, except by leave of the Judge" Rule 37.

**Interest proved**

When the Interest of the next of kin is ultimately proved in an Interest Cause he is admitted by the Court a Contradictor to the Will or, if the case be one of Intestacy, Letters of Administration are decreed to him.

## DECLARATION IN AN INTEREST CAUSE.

**Form of Declaration in an Interest Cause.**

### IN HER MAJESTY'S COURT OF PROBATE.

The                      day of                      18

A. B. (or A. B. by C. D. his Proctor, Solicitor or Attorney) saith that E. F. late of                      deceased died on or about the day of                      18                      at                      intestate (or as the case may be) a Widower, without Child, Parent, Brother or

Sister, Uncle or Aunt, Nephew or Niece, leaving the said A. B. his lawful cousin german, and one of his next of kin (or as the case may be.)

(NOTICE.)

Notice.

The Defendant must plead hereto in eight days from the date hereof, otherwise the Plaintiff will proceed to obtain Letters of Administration of the personal Estate and Effects of the said deceased (or as the case may be.)

### PLEA IN AN INTEREST CAUSE.

IN HER MAJESTY'S COURT OF PROBATE.

Form of Plea in Interest Cause.

The day of 18

G. H. (or G. H. by I. K. his Proctor, Solicitor or Attorney) saith that G. H. the Plaintiff, is not the lawful cousin german of E. F. who died on or about the day of 18 at the deceased in this Cause. And further, that the said deceased died intestate (or as the case may be) a Widower, without Child, Parent, Brother or Sister, Uncle or Aunt, Nephew or Niece, or cousin german, leaving him the said G. H. his lawful cousin german once removed, and his only next of kin (or as the case may be).

### SUIT IN FORMA PAUPERIS.

"Any Person desirous of prosecuting a Suit in *formā pauperis* is to lay a Case before Counsel, and obtain an opinion that he or she has reasonable grounds for proceeding." (Rule 23.)

Case to be laid before Counsel.

"No Person shall be admitted to prosecute a Suit in *formā pauperis* without the Order of the Judge; and to obtain such Order, the Case laid before Counsel, and his opinion thereon, with an Affidavit of the Party, or of his or her Proctor, Solicitor, or Attorney, that the said Case contains a full and true Statement of all the material facts, to the best of his or her knowledge and belief, and an Affidavit by the Party applying that he or she is not worth £25 after payment of his or her just debts, save and except his or her wearing apparel, shall be produced at the time such application is made." (Rule 24.)

Order of the Judge required.

"Where a Pauper omits to proceed to trial, pursuant to Notice, he or she may be called upon by Summons, to show cause why he or she should not pay Costs, though he or she has not been dispaupered, and why all future proceedings should not be stayed until such costs are paid." (Rule 25.)

Costs.

## CHAPTER VIII.

ATTACHMENT—FIERI FACIAS—SEQUESTRATION  
—PAYING MONEY INTO AND OUT OF  
COURT—ADMINISTRATORS PENDENTE LITE  
—RECEIVERS OF REAL ESTATE—BILLS OF  
COSTS.

Writs of attachment and other Writs. “APPLICATIONS for Writs of Attachment, and also Writs for Fieri Facias and of Sequestration, must be made to the Judge by Motion in Court.” (Rule 107.)

By whom prepared. “Such Writs when ordered to issue, are to be prepared by the party at whose instance the order has been obtained, and taken to the Registry with an Office Copy of the Order, and, when approved and signed by one of the Registrars, shall be sealed with the seal of the Court, and it shall not be necessary for the Judge to sign such Writs.” (Rule 108.)

To be Sealed. “Any person in custody under a Writ of Attachment may apply for his or her discharge to the Judge if the Court be then sitting; if not, then to one of the Registrars who for good cause shown shall have power to order such discharge.” (Rule 109.)

Application for discharge. The Fee for a Writ of Attachment is 7s. 6d., Writ of Sequestration £1, and Writ of Fi fa £1.

Fees. If the party against whom an Attachment has issued, has removed into another County, it is not necessary to bring in the first attachment in order to have a new one. The practitioner may have as many out at the same time as he pleases.

Several attachments may be had. Application for the discharge of a prisoner may be made either by Motion or Summons. The Order on Summons is—

K. v. S.

Judge's Order dismissing party from Custody. Upon hearing Counsel for the Defendants, and by consent of the Solicitors for the Plaintiff, I do order that the Defendant J S, now in Custody in Her Majesty's Gaol at, under an Attachment issued from this Court for disobedience to the lawful Commands of the Court, be discharged from Custody so far as concerns such Attachment.

Judge's Signature (stamped).

# PAYING MONEY INTO AND OUT OF COURT.

When it has been ordered that Money be paid into Court, either as security for Costs or otherwise, the payment is made to a Registrar, and generally in the Registry. A minute to that effect is then entered in the Court Book.

Paying in money.

When a Registrar is directed to Report what sum will be sufficient security for costs the following is the form of Report:—

IN HER MAJESTY'S COURT OF PROBATE.

“On the day of 186 before the undersigned Registrar of Her Majesty's Court of Probate.”

Report as to Security for Costs.

A. B. against C. D.

“Referring to the Order of the Judge of this Court made in this Cause on whereby it was ordered that the

do pay into the Registry of Her Majesty's Court of Probate such sum as may be reported sufficient by one of the Registrars of the said Court to cover the expenses of the

or give such Security for the said Expenses as the said Registrar may deem sufficient, and having this day heard the Agents of the and of the

thereon, the undersigned Registrar of Her Majesty's Court of Probate reported to the Court that the sum of

Pounds was a sufficient Sum to be paid into the Registry of the said Court of Probate to cover the Expenses aforesaid, or that a Bond taken under the Hand and Seal of the said and of two sufficient Sureties in the

penal Sum of Pounds, conditioned for the payment of such Expenses of the said as shall be certified to be due and payable by the said

with Notice of such Sureties to the

of the was a sufficient Security for the Expenses aforesaid.”

When the Money is paid in, a Minute to the following effect is signed by the Registrar.

IN HER MAJESTY'S COURT OF PROBATE.

“On the day of 186 Before the Undersigned Registrar of Her Majesty's Court of Probate.”

Form of minute when money is paid in.

J. against C. and Others.

“P. and C., of the Solicitors for the Defendant,

in pursuance of the Order of the Judge of this Court made in this Cause on the                      day of                      186                      , whereby it was ordered that the Defendants do within a fortnight of that date give security in such sum as one of the Registrars of this Court might report to be sufficient to cover the costs of the Plaintiff of and in this suit paid into the Registry of the said Court the sum of                      the same being the amount reported by                      one of the said Registrars to be sufficient to cover the costs aforesaid by his Report bearing date the                      day of                      186                      .

(Signed), "X. Y.,  
Registrar."

Or a Minute to the following effect is prepared according to circumstances:—

#### IN HER MAJESTY'S COURT OF PROBATE.

A. v. B.

"On the                      day of                      186                      , Before the undersigned Registrar of the Principal Registry C. D. the Solicitor for the Plaintiff in this Cause, paid into the Registry of this Court the sum of                      Pounds, the same being the amount directed by the Order of the Judge made in this Cause, bearing date the                      day of                      186                      , to be paid by the Plaintiff into the Registry, to abide the result of the accounts between the Plaintiff and Defendant being balanced.

(Signed), "X. Y.,  
Registrar."

After the money has been paid into the Registry it is handed to the Accountant who gives the following receipt:

"Received the above-named Sum of                      Pounds, this                      day of                      186                      .

(Signed), "Q. R.,  
Accountant."

On application for money out of Court the following rule must be complied with:—

Paying Money  
out of Court.

"Persons applying for payment of money out of the Registry must give forty-eight hours notice of such application to the Clerk of the Papers. Such notice is to be in writing, and to set forth the day on which the money applied for was paid into the Registry—the Minute entered on receiving the same—the date and particulars of the

order for payment to the applicant—and if the same be in payment of costs, the date of filing the bill for taxation and of the Registrar's certificate. During the summer vacation money can only be paid out on certain days, to be fixed by the Registrars, notice whereof will be given in the Registry." (Rule 97.)

The following is a form of Notice:—

IN HER MAJESTY'S COURT OF PROBATE.

A. v. B.

"Notice of \_\_\_\_\_ of \_\_\_\_\_ in the County of \_\_\_\_\_ Solicitor for (Plaintiff or Defendant) on payment out of the Registry of Her Majesty's Court of Probate, to him of the sum of \_\_\_\_\_ heretofore paid into the Registry of the said Court by the (Plaintiff or Defendant) to cover the costs and expenses of the (Plaintiff or Defendant) of and incidental to the hearing of this Cause."

"On the \_\_\_\_\_ day of \_\_\_\_\_ 186\_\_\_\_, A. B., the Solicitor (for the Plaintiff or Defendant) paid into the Registry of the said Court the said sum of \_\_\_\_\_ Pounds."

The Minute entered in the Court Books on receiving the said sum is as follows:—(here insert the Minute).

"On the \_\_\_\_\_ day of \_\_\_\_\_ 186\_\_\_\_, the Solicitor for the (Plaintiff or Defendant) filed the Bill of Costs incurred on behalf of the (Plaintiff or Defendant) dated \_\_\_\_\_."

"The Registrar's Certificate of the taxation of the said Bill of Costs bears date the \_\_\_\_\_ day of \_\_\_\_\_ 186\_\_\_\_."

"The Order for payment out of the Registry of the said sum of \_\_\_\_\_ Pounds to the said \_\_\_\_\_ the (Plaintiff or Defendant's) Solicitor, is dated the \_\_\_\_\_ day of \_\_\_\_\_ 186\_\_\_\_, and is as follows:—"

IN HER MAJESTY'S COURT OF PROBATE.

A. v. B.

Order of Pay-  
ment.

"On the \_\_\_\_\_ day of \_\_\_\_\_ 186\_\_\_\_,  
Before the undersigned Registrar of the Principal  
Registry of Her Majesty's Court of Probate."

"Referring to the order of the Judge of this Court made in this Cause on Summons, and bearing date the \_\_\_\_\_ day of \_\_\_\_\_ 186\_\_\_\_, whereby it was directed that the sum of \_\_\_\_\_ Pounds \_\_\_\_\_ shillings and \_\_\_\_\_ pence, part of the sum of \_\_\_\_\_ Pounds, heretofore paid into the

Registry of Her Majesty's Court of Probate by the (Plaintiff or Defendant) be paid to the (Plaintiff or Defendant's) Solicitor. The said applied for the said sum of so directed to be paid out to him and brought in a Receipt for the said sum subscribed by him, the signature to which he acknowledged to be his handwriting and subscription. Whereupon the undersigned Registrar ordered payment to him of the said sum of Pounds."

(Signed), "X. Y.,  
Registrar."

Receipt.

IN HER MAJESTY'S COURT OF PROBATE.

A. v. B.

RECEIVED 186 , of the Registrars of the Principal Registry of Her Majesty's Court of Probate the sum of pounds shillings pence, the same being the amount of the (Plaintiff or Defendant's) Bill of Costs as taxed, together with the costs of the Application for Payment added thereto, and directed to be paid out to me, the (Plaintiff or Defendant's) Solicitor, by order of the Judge of this Court, made on Summons dated the day of 186 .  
£ : :

# ADMINISTRATOR PENDENTE LITE—RECEIVER OF REAL ESTATE.

To exhibit Inventory and Account.

"Every Administrator pendente lite and receiver of real estate shall exhibit an Inventory, and render an Account of the property of the deceased which comes to his hands, and the Accounts of every such Administrator and Receiver shall be referred to the Registrars of the Principal Registry for investigation and report, before the same are allowed by the Court, unless the Judge shall otherwise direct; and the foregoing Rules and Orders respecting the taxation of costs (A) shall, so far as the same are applicable, be observed with respect to the investigation of such accounts, and any other accounts referred to the Registrars for examination." Rule 96.

Receiver of real Estate to give Bond.

"A Receiver of real estate pending Suit is to give Bond in the form given (No. 29) or in a form as near thereto as the circumstances of the Case will admit of, with two Sureties, and in a Penalty of such an amount as may be directed by the Judge." Rule 79.



The appointment of an Administrator pendente lite and Receiver of real estate is obtained on Motion.

									Fees.
Entering Order appointing a Receiver of real estate	...	...	...	...	...	...	...	1	0 0
Bond to be executed by the Receiver of real estate :									
If three folios of seventy-two words, or under	...	...	...	...	...	...	...	0	6 0
If above three folios of seventy-two words, per folio	...	...	...	...	...	...	...	0	2 0
On each reference :									
For the Registrar's attendance	...	...						1	0 0
For every hour or part of an hour, after the first hour, a further Fee of	...	...						0	10 0
For the Registrar's Report, if five folios of seventy-two words, or under	...	...						0	10 0
If exceeding five folios, for every additional folio	...	...	...	...	...	...	...	0	2 0

Reference to Registrar for Report.

## REGISTRARS' SELECTION OF ADMINISTRATOR PENDENTE LITE.

IN HER MAJESTY'S COURT OF PROBATE.

B. v. B. and B.

On Monday the            day of            186

Referring to the Order of the Judge of this Court dated the            day of            186 whereby it was ordered that one of the Registrars of this Court do select some person as Administrator pendente lite of the personal Estate and Effects of the deceased in this Cause and having this day heard the Agents of the Plaintiff and Defendants respectively thereon. I do report to the Court that Mr.            of

Auctioneer and Estate Agent is a proper person to be so appointed (both parties consenting thereto) and I do select him accordingly.

X. Y.

Registrar.

## BILLS OF COSTS.

"All bills of Costs in Contentious Business are referred to the Registrars of the Principal Registry for taxation, and may be taxed by them without any special order for that purpose. Such Bills are (unless by leave of the Judge or a Registrar) to be filed in the Registry two days at least be-

Contentious Business.  
Taxation.

fore the day appointed for the taxation. An appointment for taxation will be made at the time of filing the Bill." Rule 92.

Notice of ap-  
pointment to  
tax.

"The party who has obtained an appointment to tax his bill of Costs shall give the other party or parties to be heard on the taxation thereof at least one clear day's notice of such appointment, and shall at the same time deliver to him or them a Copy of the bill to be taxed." Rule 93.

Non-Atten-  
dance.

"When an appointment has been made by a Registrar of the Principal Registry for taxing any bill of Costs, and any of the parties to be heard on the taxation do not attend at the time appointed, the Registrar may nevertheless proceed to tax the bill, after the expiration of a quarter of an hour upon being satisfied by Affidavit that the parties not in attendance had due notice of the time appointed." Rule 94.

Deduction.

"If more than one sixth is deducted from any bill of Costs taxed as between practitioner and Client, no Costs incurred in the taxation thereof shall be allowed as part of such bill." Rule 95.

Non-CONTEN-  
TIOUS BUSINESS.  
Taxation.

"Any bill of Costs may be referred to the Registrars of the Principal Registry for taxation, and no special order shall hereafter be required for the purpose" Rule 88.

Any Bill Taxed.

"The Bill of Costs of any Proctor, Solicitor, or Attorney, will be taxed on his application, after sufficient notice given to the person or persons liable for the payment thereof, or on the application of such person or persons after sufficient notice given to the Practitioner, and the Registrar shall decide in each case what may be a sufficient notice." Rule 89.

Non-Atten-  
dance.

"When an appointment has been made by a Registrar to tax a bill, the Registrar may proceed to tax the same after the expiration of a quarter of an hour, notwithstanding the absence of either party or his agent, provided he be satisfied that the absent party has had due notice of the appointment for taxation." Rule 90.

Deduction.

"If more than one sixth is deducted from any Bill of Costs taxed as between Practitioner and Client, no costs incurred in the taxation thereof shall be allowed as part of such Bill." Rule 91.

Bill brought to  
Clerk of the  
Papers.

Bills of Costs are brought to the Clerk of the Papers.

Each column must be cast up separately, and the amount put at the bottom in pencil.

The number of folios must be counted and placed at the end of the Bill.

A summary of the amount of each column must be placed at the end of the Bill. Directions.

A 2s. 6d. Probate Stamp must be brought in with each Bill.

The appointment for taxation is sent to the Practitioner, Appointment.  
if not otherwise obtained.

The party obtaining the appointment is to give the other parties to be heard on taxation at least one clear day's notice of the appointment, and at the same time deliver to them a copy of the Bill to be taxed. Notice.  
Copy delivered

For taxing every Bill of Costs, inclusive of the Registrar's Certificate :

	£	s.	d.	
If fivefolios of seventy-two words, or under	0	5	0	Non-CONTENTIOUS BUSINESS
If exceeding that length, for every additional folio ... ..	0	1	0	

For postponement of appointment for taxation of costs, to be paid by the party at whose instance the appointment is postponed :

If the Bill of Costs is five folios of seventy-two words or under ... ..	0	1	0	Fees. CONTENTIOUS BUSINESS.
If exceeding five folios of seventy-two words and under fifteen folios ... ..	0	2	6	
If exceeding fifteen folios ... ..	0	5	0	
Taxing every Bill of Costs :				
When taxed as between party and party, per folio of seventy-two words each ...	0	0	6	
When taxed as between practitioner and client, per folio of seventy-two words each ... ..	0	1	0	

The fee for taxing every Bill of Costs shall be due from each party heard on the taxation thereof.

For postponement of appointment for taxation of costs, to be paid by the party at whose instance the appointment is postponed :

If the Bill of Costs is five folios of seventy-two words or under ... ..	0	1	0
If exceeding five folios of seventy words and under fifteen folios ... ..	0	2	6
If exceeding fifteen folios ... ..	0	5	0

**NOTE.**—Bills of Costs are purposely not introduced. These and other matters will more conveniently appear in another volume.

## CHAPTER IX.

## REGISTRARS' ORDERS.

A considerable portion of Testamentary Business is transacted in the Principal Registry by means of formal Registrars' Orders.

The forms of some of these Orders are printed, others require to be expressly drawn. Those at present printed are—

Order for Grant after Contentious proceedings have been discontinued.

After Conditional Order on Motion or in a Cause.

For Grant after Citation to accept or refuse, and non-appearance.

For Revocation of Grant.

For Appointment of Guardian.

To bring in Will for safe custody on renunciation of Executors, &c.

On Renunciation of Executor to whom power has been reserved.

For alteration of Grant.

For Notation of Domicile.

For Subpoena to bring in a Testamentary Paper.

To found Jurisdiction of County Court.

Miscellaneous Orders.

The mode of proceeding with reference to these Orders will now be briefly explained.

#### ORDER FOR GRANT AFTER CONTENTIOUS PROCEEDINGS HAVE BEEN DISCONTINUED.

Order for Grant after Contentious Proceedings have been discontinued.

After Contentious proceedings have been discontinued on Summons, the Grant of Probate or Administration is obtained by means of a Registrar's Order.

The form is filled up by the Practitioner, and must show the right of the party to the Grant.

The Fee for the Order is 2s. 6d.

If the Grant is to issue from a District Registry a Copy of the Order must be obtained and sent by the Practitioner to the District Registry. A copy of the Order is generally required by the Clerk of the Seat when the Grant is to issue from the Principal Registry.

Printed forms of this Order may be obtained from the Clerk of the Papers.

## ORDER AFTER CONDITIONAL ORDER ON MOTION OR IN A CAUSE.

When in any Cause or Motion a Grant has been decreed by the Court, subject to the amendment of an Affidavit or other Document, or the production to the Registrar, or filing any further Document, a Registrar's Order is necessary directing the Grant to issue. It must state the condition upon which the Court decreed the Grant, and show that the condition has been complied with.

Order after Conditional Order on Motion or in a Cause.

The Fee for the Order is 2s. 6d.

Printed Forms of this Order may be obtained from the Clerk of the Papers.

## ORDER FOR GRANT AFTER CITATION TO ACCEPT OR REFUSE AND NON-APPEARANCE.

When a Party has been cited to accept or refuse a Grant he may after entering an appearance, obtain the Grant by a Registrar's Order.

Order for Grant after Citation to accept or refuse and non-appearance.

An Affidavit is required as to the party having been cited to accept or refuse—that an appearance has been entered—that notice of the entry of such appearance was on such a day served on the Solicitor of the Plaintiff, and that no Summons has been served or other proceeding taken in the Cause since the service of the Notice.

Printed Forms of this Order may also be obtained from the Clerk of the Papers.

The charge for the Order is 2s. 6d. For the Affidavit 2s. 6d.

## ORDER FOR REVOCATION OF GRANT.

When a Grant has been discovered to have been wrongly made, or Administration has been granted, and a Will afterwards discovered, the Grant may be revoked by Registrar's Order. An Affidavit of the facts will be required, and if it be to revoke an Administration in consequence of the discovery of a Will, the Registrar will require to see the Will, and if the Attestation Clause be imperfect, have proof of the due execution before making the Order.

Order for Revocation of Grant.

The Fee for Revocation is 5s. For filing the Grant 2s. 6d. For the Order, 2s. 6d. For the Notation of the Revocation, 2s. 6d.

The facts required to be set forth in the Affidavit are, to whom the Grant was made—by what Court—and when—and that it has since been discovered that the deceased left a Will (or as the Case may be). Printed Forms of the Order may be obtained from the Clerk of the Papers.

### ORDER FOR APPOINTMENT OF GUARDIAN.

Order for  
Appointment  
of Guardian.

“Grants of Administration may be made to guardians of minors and infants for their use and benefit, and elections by minors of their next of kin, or next friend, as the case may be, will be required; but proxies accepting such guardianships and assignments of guardians to minors will be dispensed with.” Rule 33.

“In cases of infants (*i.e.* under the age of seven years) not having a testamentary guardian, or a guardian appointed by the High Court of Chancery, a guardian must be assigned by order of the Judge, or of one of the Registrars; the Registrar's order is to be founded on an Affidavit showing that the proposed guardian is either *de facto* next of kin of the infants, or that their next of kin *de facto* has renounced his or her right to the guardianship, and is consenting to the assignment of the proposed guardian, and that such proposed guardian is ready to undertake the guardianship.” Rule 34.

“Where there are both minors and infants, the guardian elected by the minors may act for the infants, without being specially assigned to them by order of the Judge or a Registrar, provided that the object in view is to take a Grant. If the object be to renounce a Grant the guardian must be specially assigned to the infants, by order of the Judge or of a Registrar.” Rule 35.

“In all cases where Grants of Administration are to be made for the use and benefit of minors or infants, the administrators are to exhibit a Declaration on oath of the personal estate and effects of the deceased, except when the effects are sworn under the value of twenty pounds, or when the administrators are the guardians appointed by the High Court of Chancery, or other competent Court, or are the Testamentary guardians of the minors or infants.” Rule 36.

The particulars required in the Affidavit are,—the date of death—that deceased left an infant, of the age of

incapable of acting in his own name, or of electing a guardian,—that A. B. is the next of kin of the infant,—and that he is ready and willing to accept the guardianship. Printed forms of the Order may be obtained from the Clerk of the Papers. The Fee for the Order is 2s. 6d. For the Affidavit 2s. 6d.

### ORDER TO BRING IN WILL FOR SAFE CUSTODY ON RENUNCIATION OF THE EXECUTORS, &c.

When a Will is in the custody of an Executor, Residuary Legatee, or other person entitled to a Grant, he may voluntarily bring it into the Principal Registry for safe custody, upon filing therewith a Renunciation of Probate or Administration, with the Will annexed (as the case may be).

Order to bring in Will for Safe Custody on Renunciation of the Executors, &c.

The Fee for filing the Will is 10s., for the Renunciation 2s. 6d., and for the Order 2s. 6d.

Printed Forms of this Order may be obtained from the Clerk of the Papers.

### ORDER ON RENUNCIATION OF EXECUTOR TO WHOM POWER HAS BEEN RESERVED.

An Executor to whom power to take Probate has been reserved may renounce, and file his Renunciation in the Registry, by means of a Registrar's Order.

Order on Renunciation of Executors to whom Power has been reserved

The Renunciation should contain the name of some Practitioner authorized to file the Renunciation.

The Fee for the Order is 2s. 6d. For filing the Renunciation 2s. 6d., and 2s. 6d. for the Notation of the Renunciation.

Printed Forms of this Order may be obtained from the Clerk of the Papers.

An Office Copy of the Order is usually obtained in order to afford proof (if necessary) of the Renunciation having been filed.

### ORDER FOR ALTERATION OF GRANT.

When any alteration is required to be made in a Probate or Administration after it has passed the Seal, either through the discovery of an error or of some discrepancy between the Grant and Bank Books in the description of the deceased, the alteration may be made by Registrar's Order. An Affidavit of the facts will be required.

Order for alteration of Grant.

The fee for the Order is 2s. 6d.—for the Affidavit, 2s. 6d., and for the alteration 2s. 6d.—for the Notation 2s. 6d. The alteration will be made by the Clerk of the Seat if it be in the Probate or Administration, or by the Examiner if in the engrossment.

An office copy of the Order is usually obtained for the Bank,—printed forms of this Order may be obtained from the Clerk of the Papers.

N.B.—The Registrars almost always direct a Grant to be revoked where the surname or first christian name is required to be altered.

### ORDER FOR NOTATION OF DOMICILE.

Order for  
Notation of  
Domicile.

By 21 & 22 Vict., c. 56, it is enacted that where a deceased person, domiciled in England at the time of his death, leaves property in Scotland or in Scotland and Ireland, the whole of his personal estate within the United Kingdom may be included in the Grant. For this purpose a Notation to the effect that “deceased died domiciled in England, and that the effects are sworn under within the United Kingdom” is made on the Grant.

Special Affidavits in accordance with Sec. 15 of the Act are required and may be furnished on applying for the Grant or afterwards.

If the Notation is to be made on a Grant which has been passed, a Registrar's Order for Notation of Domicile with the necessary Affidavit, and the Grant must be left with the Clerk of the Seat.

Printed forms of this Order may be obtained from the Clerk of the Papers. The fee for the Order is 2s. 6d., for the Affidavit, 2s. 6d. For Noting on a Probate or on Letters of Administration, with or without Will annexed, that the Testator or Intestate died domiciled in England, 5s.

### ORDER FOR SUBPŒNA TO BRING IN A SCRIPT.

Order for  
Subpœna to  
bring in a Script

When a Will or Testamentary Paper is in the possession, within the power, or under the control of any person who delays or declines to bring it into the Principal or a District Registry, a Registrar's Order may be obtained for a Subpœna to issue to compel such person to bring the same into the Principal or a District Registry.

An Affidavit is required that the Will is in the possession, within the power, or under the control of the person against



whom the Subpcena is to issue. If the date of the Will be known it should be stated, or the Affidavit should state that the date is unknown.

Printed forms of this Order may be obtained from the Clerk of the Papers. The fee for the Subpcena is 5s.—for the Order, 2s. 6d.—for the Affidavit, 2s. 6d.

N.B.—Under Sec. 23 of 21 & 22 Vic., ch. 95., in order to obtain the Registrar's Order, the paper must be shown to be in the possession, within the power, or under the control of some particular person. Where this is doubtful the proceeding must be before the Judge, under 20 & 21 Vic., cap. 77, sec. 26.

### ORDER TO FOUND JURISDICTION OF THE COUNTY COURT.

When it appears by Affidavit to the satisfaction of a Registrar of the Principal Registry that the personal estate of a party deceased is under the value of £200., and the real estate under the value of £300., the Registrar may grant an Order to found the jurisdiction of the County Court of the District in which the deceased had a fixed place of abode, for the hearing of any Cause connected with the Will of the deceased. If proceedings have been taken in the Principal Registry, the Order to found the jurisdiction of the County Court is generally made by the Judge.

Order to found  
Jurisdiction  
of the County  
Court.

The Affidavit must state the time of death,—that deceased had a fixed place of abode in the District,—that the personal estate and effects which the deceased died possessed of or entitled to, and for and in respect of which a Grant is required, exclusive of what the deceased may have been possessed of or entitled to as a Trustee for any other person and not beneficially, and without deducting anything on account of the debts due and owing from the said deceased, were at the time of his death under the value of £200., and that the said deceased, at the time of his death, was not seized or entitled beneficially of or to any real estate of the net value of £300. or upwards.

A printed form of this Order may be obtained from the Clerk of the Papers. Fee for the Order, 2s. 6d.,—for the Affidavit, 2s. 6d.

The following are examples of Registrar's Orders the forms of which are not printed, but drawn according to circumstances by the Practitioner.

ORDER FOR PROBATE TO BE ATTACHED TO  
NEW ENGROSSMENT.

Order for  
Probate to be  
attached to new  
Engrossment.

IN HER MAJESTY'S COURT OF PROBATE.

On the day of 186  
Before the undersigned Registrar of the Principal  
Registry.

In the Goods of A. B. deceased.

C. D. the Solicitor or E. F. the Executor exhibited Affidavit of sworn on the day of 186 and also probate of the last Will and Testament of A. B. late of deceased dated day of 186 whereby it appeared that the Engrossment of the said Will had been seriously damaged and rendered unfit for use by having been left on the top of a Gas Stove and that it was necessary that a new Engrossment should be made as several matters remained to be carried into execution under the said Will. Whereupon the undersigned Registrar of the Principal Registry of this Court on the application of the said ordered that the Probate affixed to the damaged Engrossment of the said Will be detached therefrom and be affixed to a new Engrossment of the said Will with the Seal of this Court, the said Engrossment having been previously examined by the Probate Examiner.

X. Y.,  
Registrar.

## ORDER FOR EXEMPLIFICATION OF AFFIDAVITS.

Order for  
Exemplification  
of Affidavits.

IN HER MAJESTY'S COURT OF PROBATE.

On the day of 186  
Before the undersigned Registrar of the Principal  
Registry.

In the Goods of A. B. deceased.

Upon reading the Affidavit of C. D. sworn day of 186 whereby it appeared that Letters of Administration with the Will annexed of the personal Estate and Effects of A. B. late of deceased were on the day of 186 granted at the Principal Registry to and that the said deceased died possessed of real and personal Estate in the State of Pennsylvania in the United States of America and that is necessary for the Interests of the parties that the said Will of the said deceased should be proved in America. AND WHEREAS it further

appeared that it is essential for the proof of the said Will in America that the due execution of the same should be proved by the Affidavits or Examinations of the attesting Witnesses and that such Affidavits should be exemplified. Whereupon the undersigned Registrar of the Principal Registry ordered that the Affidavits of \_\_\_\_\_ sworn on the \_\_\_\_\_ and now filed in the Principal Registry be exemplified with the said Letters of Administration with the Will annexed.

X. Y.,  
Registrar.

### ORDER FOR JOINT GRANT.

IN HER MAJESTY'S COURT OF PROBATE.

Order for Joint  
Grant.

On the \_\_\_\_\_ day of \_\_\_\_\_ 186 \_\_\_\_\_ before the undersigned Registrar of the Principal Registry.

In the Goods of H. W. deceased.

On which day was exhibited an Affidavit of G. W. the lawful Widow and Relict of the said H. W. late of \_\_\_\_\_ in the County of \_\_\_\_\_ wherein it was deposed that the said G. W. was consenting and desirous that G. A. W. the natural and lawful daughter and only next of kin of the said deceased and together with the said G. W. the only person entitled to his personal estate and effects should be joined with her in the Letters of Administration of the personal estate and effects of the above-named deceased. Whereupon it was ordered that Letters of Administration of all and singular the personal estate and effects of the said deceased be granted to the said G. W. the lawful Widow and Relict of the deceased and the said G. A. W. the natural and lawful daughter and only next of kin of the said deceased jointly.

X. Y.,  
Registrar.

### ORDER ON NON-APPEARANCE OF REPRESENTATIVE OF EXECUTOR.

IN HER MAJESTY'S COURT OF PROBATE.

On the \_\_\_\_\_ day of \_\_\_\_\_ 186 \_\_\_\_\_  
K. v. M.

Order on Non-  
Appearance of  
Representative  
of Executor.

In the Goods of J. C. deceased

W. H. the Solicitor of the Plaintiff filed Affidavits of J. A. and J. A. S. sworn respectively the \_\_\_\_\_ day

of 186 and the day of 186 with Citation annexed by which it appeared that J. C. late of died on the day of 186 having made his Will with a Codicil thereto and in his said Will appointed his Wife J. C., T. K., and W. S. M. Executors. That in the month of 18 a Probate of the said Will and Codicil was granted to the said J. C., T. K. and W. S. M. by the Prerogative Court of Canterbury. That the said J. C., T. K. and W. S. M. for some time intermeddled in the personal Estate and effects of the said deceased and are since dead, leaving part thereof unadministered. That the said W. S. M. survived his Co-Executors and died on the day of 186 having made his Will and thereof appointed R. S. M. sole Executor. That the said R. S. M. has been duly cited by a Citation bearing date the day of 186 to accept or refuse the Probate and execution of the said Will of the said W. S. M. That the time limited by the said Citation for an appearance to be entered by the said R. S. M. hath since expired but that he hath not in anywise appeared to the said Citation. Whereupon the undersigned Registrar ordered that such Citation and non-appearance of the said R. S. M. be noted in the Calendar as usual.

X. Y., Registrar.

### ORDER GIVING GRANT TO NEXT OF KIN INSTEAD OF WIDOW.

IN HER MAJESTY'S COURT OF PROBATE.

The Principal Registry.

Order giving  
Grant to next  
of kin, instead  
of Widow.

On the day of before the  
undersigned Registrar of the Principal Registry.  
In the Goods of

On reading the affidavit of sworn on  
whereby it appeared that late of  
Gentleman, deceased, died there on and that  
Wife of the said deceased, in the year  
eloped from her Husband, the said deceased, and went to  
Australia in company with a man named  
with whom she afterwards, during the lifetime of the said  
deceased, went through the ceremony of marriage, and that  
she has never in any way since that time communicated  
with her said Husband or their children, and it is not  
known whether she is now alive or dead,—the undersigned

Registrar ordered that Letters of Administration of the personal estate and effects of the said deceased should be granted to the natural and lawful son and one of the next of kin of the said deceased, or to his lawful Attorney, for his use and benefit, on his giving justifying security.

E. F., Registrar.

ORDER AFTER CITATION BY REPRESENTATIVE  
OF EXECUTOR, *v.* EXECUTORS, TO WHOM  
POWER WAS RESERVED.

IN HER MAJESTY'S COURT OF PROBATE.

The day of 186  
Between H. W. L. and W. H., Plaintiffs,  
and

T. W., J. C., and D. C., Defendants.

In the Goods of V. W., deceased.

Messrs. C. & Co., the Solicitors of the Plaintiffs, filed Affidavit of H. W. L. and W. H., sworn the day of 186 with Citation by which it appeared that V. W., late of in the County of Engineer, deceased, died on the day of 186 having made his Will and thereof appointed S. W., T. W., J. C., D. C., and T. D. W., joint Executors. That in the month of 18 Probate of the said Will was granted to the said S. W. by the Prerogative Court of Canterbury, power being reserved of making the like Grant to the said T. W., J. C., D. C., and T. D. W. That the said T. D. W. has since died without having taken upon himself Probate of the said Will. That the said S. W. died on the day of 186 having made her Will, and thereof appointed W. B. G. and the said H. W. L. and W. H. joint Executors. That in the month of 186 Probate of the said Will was granted to the said H. W. L. and W. H. by the District Registry at power being reserved of making the like grant to the said W. B. G. That the said T. W., J. C., and D. C. have been duly Cited by a Citation bearing date the day of 186 to accept or refuse the Probate

Order after Ci-  
tation by repre-  
sentative of  
Executor *v.*  
Executors to  
whom power  
was reserved.

X. Y., Registrar.

ORDER AFTER CITATION, APPEARANCE AND  
RENUNCIATION OF PARTY CITED.

## H. R. against A. D.

Messrs. B. H. & P., of \_\_\_\_\_ in the county  
of \_\_\_\_\_ the Solicitors for the Plaintiff in this  
Cause, alleged that A. D., the Defendant in this Suit,  
was served with a Citation, issued under the Seal of  
this Court, on the \_\_\_\_\_ day of \_\_\_\_\_

X. Y., Registrar.

ORDER BY TWO REGISTRARS FOR ADMINISTRATION TO ISSUE, NOTWITHSTANDING FOURTEEN DAYS HAVE NOT ELAPSED SINCE THE TIME OF DEATH.

On the                      day of                      186                      before                      Order for Administration to issue under fourteen days from death.  
 the undersigned Registrars of the Principal Registry—  
 In the Goods of J. C., late of                      in the County  
 of                      , deceased.

On reading the Affidavits of  
 and                      sworn respectively on the  
                     day of                      18                      , whereby  
 it appeared that the above-named I. C. died on the  
                     day of                      18                      , and that it is  
 necessary, for the preservation of the estate of the said  
 deceased, that Letters of Administration of his personal  
 estate and effects should be immediately granted. The  
 undersigned Registrars ordered that Letters of Adminis-  
 tration of the estate and effects of the said deceased should  
 be granted to M. A. C., the lawful widow and relict of the  
 said deceased, if entitled thereto, notwithstanding the  
 fourteen days have not elapsed since the death of the said  
 deceased.

A. B., Registrar.

C. D., Registrar.

By Rule 43 (Non-Contentious) it is ordered that "No Probate or Letters of Administration, with the Will annexed, shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the Judge, or by order of two of the Registrars."

By Rule 44 it is ordered that "No Letters of Administration shall issue until after the lapse of fourteen days from the death of the deceased, unless under the direction of the Judge, or by order of two of the Registrars."

ORDER TO BRING IN SECURITY FOR COSTS.

IN HER MAJESTY'S COURT OF PROBATE.

On the                      day of                      18                      .  
                     S. v. A.

On hearing the Agents of both parties, and on referring  
 to the Order of the Judge of this Court, dated                      Order to bring in Security for Costs  
                     whereby it was ordered that the Defendant

This Order  
would probably  
be drawn by  
the Registrar  
himself.

give such Security, and in such amount, as may be approved of by one of the Registrar's of this Court, to make good the Costs of the Plaintiff in this Suit, in case the Defendant should be adjudged to pay the same, the undersigned Registrar of the Court of Probate directed that the sum of £                      be brought into and deposited in the Registry of this Court, to await the further order of the Judge of this Court in respect to the Costs of the Plaintiff, or that the Defendant do enter into a Bond with two sufficient Sureties conditioned for the payment of the said sum of £                      or such smaller sum as may be ordered to be paid by the Defendant for and in respect of the Costs of the Plaintiff, and that twenty-four hours notice of such Sureties be given to the Agent of the Plaintiff.

X. Y., Registrar.

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## APPENDIX.

ABSTRACT OF CITATION FOR INSERTION IN  
NEWSPAPER.

1

To R D , late of , in the County of Abstract of  
 , Gentleman. Citation for  
 insertion in

Abstract of  
Citation for  
insertion in  
Newspaper.

TAKE NOTICE, that on the       day of       186   a Citation issued under Seal of Her Majesty's Court of Probate at the Instance of E       S       , of       , in the County of       , Widow, the Administratrix (with the Will annexed) of the personal Estate and Effects of T       H       , deceased, whilst living the natural and lawful Son and only Child of M       H       , late of       , in the County of       , Widow, deceased, Citing you as the surviving Executor of the Will bearing date       day of       , 186   , of the said M       H       , deceased, which Will has been lost or mislaid, within 8 days after service of the said Citation, inclusive of the day of service, to cause an appearance to be entered for you in the said Court of Probate, and propound a copy of the said Will now remaining in the Principal Registry of the said Court, if you should think it is for your interest so to do, with an intimation that in default of your so doing the Judge of the said Court of Probate, or the Registrars of the Principal Registry, will proceed therein according to Law, your absence notwithstanding.

T. & T.

(Signed)

A. B.

Solicitors,

Regr.

Gresham Street, London.

ADVERTISEMENT FOR INFORMATION AS TO PARTY.

2

T POUNDS REWARD.—WHEREAS P M, late of Advertisement.  
No. left this Country about the year 18 , and  
proceeded to and has not been heard of since the year  
; any one who can give Information as to the said P  
M , or if dead, the time and place of his death, is requested  
to apply to , Proctor or Solicitor of

M

## 3

## AFFIDAVIT AS TO NO INFORMATION.

IN HER MAJESTY'S COURT OF PROBATE.

The Principal Registry.

Affidavit as to  
no information. In the Goods of , deceased, I, , of  
(Proctor or Solicitor, or party to whom reference is to be made),  
make oath and say that I am the Proctor or, &c.,) acting for  
, and that I caused Advertisements to be inserted in  
the following Newspapers—to wit, the *Times* of ,  
the *Globe* of , the *Morning Post* of ,  
the of , which Advertisements  
respectively are in the words and figures following :—

And I further say the Exhibits produced to me and marked  
Nos. 1, 2, 3, and 4, are the Newspapers hereinbefore respec-  
tively referred to ; and I lastly say that I have not, since such  
Advertisements were so respectively inserted, received any  
information whatever as to P M , the party therein  
referred to.

Sworn by the said	}	(Signed)
at		
this		
Before me,		

## 4

AFFIDAVIT TO LEAD REVOCATION OF PROBATE—  
A SUBSEQUENT WILL HAVING BEEN FOUND.

IN HER MAJESTY'S COURT OF PROBATE.

The Principal Registry.

Affidavit to lead  
revocation of  
Probate—a  
Subsequent  
Will having  
been found. In the Goods of N W , deceased, I, T W ,  
of , in the County of , Engineer, make oath that I  
am the Son and the sole Executor named in a Will of  
late of , deceased, such Will bearing date , and  
that I duly proved the said Will in the Registry ,  
on the , believing the same at that time to be the last  
Will and Testament of the said deceased ; and I further make  
Oath and say that since Probate of the aforesaid Will being  
granted to me, a subsequent Will of the said Testator, bearing  
date the , has been discovered, and whereof T  
W , widow, the Relict of the Testator is appointed sole  
Executor. And I lastly make oath that I am now desirous of  
depositing the Probate of the aforesaid former Will of the  
Testator in the Principal Registry of Her Majesty's Court of

Probate in order that the same may be duly revoked, and a Probate of the last Will and Testament of the said Testator, bearing date as aforesaid, granted to the said I W , Widow, the sole Executrix named therein.

Sworn by the said T W ,  
at on the ,  
day of T W  
Before me,  
A Commissioner, &c.

AFFIDAVIT OF SERVICE, AND NON-ATTENDANCE  
ON SUMMONS. 5

IN HER MAJESTY'S COURT OF PROBATE.

M. agst. G.

Affidavit of  
service, and  
non-attendance  
on Summons.

I, J S , Clerk to H G , of , Solicitor for the Defendant in this Cause, make Oath and say that I did on the day of , 186 , serve a true copy of the Summons hereunto annexed on Mr. T H B , one of the Firm of Messrs. B & C , who act as Attornies for W M , the above Plaintiff, by leaving the same at the Office of Business of the said Messrs. B & C , situate at , in the County of , with the said T H B , and at the same time shewed him the original Summons. That I have this day duly attended the said Summons from 11 of the Clock to half-past 11 o'Clock, in the forenoon, at the Chambers of the Judge of the said Court at Westminster, in the County of Middlesex, but that neither the said Plaintiff, W M , nor his Attorney, S H B , nor either of the said Firm of Messrs. B & C attended the said Summons, nor did any person attend the same on his behalf to the knowledge or belief of this Deponent.

Sworn at Westminster Hall, in  
the County of Middlesex, this  
day of 18  
Before me, J S

AFFIDAVIT OF DEBT TO LEAD CITATION.

6

IN HER MAJESTY'S COURT OF PROBATE.

The Principal Registry.

Affidavit of  
Debt to lead  
Citation.

In the Goods of A B , deceased, I, C D ,  
of , make Oath and say that the said A B , late  
of , deceased, died on the day of 18 at ,  
M 2

intestate, a Bachelor, without Parent, Brother or Sister, Uncle or Aunt, Nephew or Niece, Cousin german, or any other known relation whatever.

The date, the  
nature, and  
amount.

And I further make Oath and say that the said deceased was at the time of his death justly and truly indebted to me in the sum of                pounds of lawful money of Great Britain for (here set out particulars of debt), and that no part of such sum has been since received by me or any person on my behalf, but that the whole thereof still remains justly due and owing to me, and I hold no security whatever for the same or any part thereof.

And I further make oath and say that the Estate and Effects of the said deceased consist of (state amount and particulars).

Sworn at	this	day	}	C	D
of	186				
Before me,					
E	F				
A Commissioner, &c.					

7

### AFFIDAVIT OF SERVICE OF CITATION.

IN HER MAJESTY'S COURT OF PROBATE.

The Principal Registry.—A v. B

Affidavit of service of Citation.

I, C                D                , of                make oath and say that the Citation issued in the above cause dated the                day of 186                , and now hereto annexed, marked A, was duly served by me on E                F                , of                , at                , by shewing to him the Original Citation under seal of this Honourable Court, and leaving with him a true copy thereof the                day of                186

Sworn at	on the	}	C	D
day of	186			
Before me,				
G	H			
A Commissioner, &c.				

8

### AFFIDAVIT AS TO THE INSERTION OF ADVERTISEMENT FOR NEXT OF KIN.

IN HER MAJESTY'S COURT OF PROBATE.

The Principal Registry.

Affidavit as to the insertion of Advertisement for next of kin.

In the Goods of A                B                , deceased, I, E                F                , of                (Proctor, Solicitor, or Attorney), make oath and say, that I am the (Proctor, Solicitor, or Attorney) of C                D                , the party applying for Letters of Administration of the personal Estate and Effects of the said A                B                , late of                , deceased.

And I further make oath and say, that, acting on behalf of the said C D, I caused an Advertisement requesting the relatives (if any) of the said deceased to apply to me to be inserted, once in the London morning Newspaper called the , to wit, on the day of , and once in the London morning Newspaper called the , to wit, on the day of , and once in the London evening Newspaper called the , to wit, on the day of (as by reference to the said Newspapers hereunto annexed, marked respectively No. 1, No. 2, and No. 3, will more fully appear); but that no application whatever has been made to me, this Deponent, in consequence of or in answer to the said Advertisement; nor have I been able to obtain any information respecting the relatives (if any) of the said deceased.

Sworn at this day  
of 186  
Before me,  
T M  
A Commissioner, &c. } E F

# AFFIDAVIT AS TO INSERTION OF ADVERTISEMENT FOR THE RECOVERY OF A LOST WILL.

9

IN HER MAJESTY'S COURT OF PROBATE.

The Principal Registry.

In the Goods of A B, deceased, I, C. D, of , make oath and say as follows:—

I am the Solicitor of E F, the sole Executrix named in the last Will and Testament of the above-named A B, late of , deceased, and the party applying for Probate of a Copy of the said Will.

On the day of , 18 , I caused to be inserted in the London morning Journal called the *Times*, an advertisement in the words and figures following, to wit (here set out advertisement).

The said journal is now hereunto annexed, marked A (and so on with the two other newspapers.)

No application has been made to me, this Deponent, in consequence of or in answer to the said advertisement, nor have I been able to obtain any information respecting the original Will therein referred to.

Sworn by the said C D,  
at on the  
day of 186  
Before me,  
T M  
A Commissioner, &c. } C D

Affidavit as to  
the insertion of  
Advertisement  
for the recovery  
of a lost Will.

## 10

## AFFIDAVIT IN PROOF OF LUNACY.

Affidavit in  
proof of Lunacy.

IN HER MAJESTY'S COURT OF PROBATE.

The Principal Registry.

In the Goods of A B, deceased.—We, C D, of , Surgeon, and E F, of , nurse at Lunatic Asylum, make oath and say respectively as follows :—

I, the said C D for myself make oath, that for the space of years, now last past, I have attended in my professional capacity E B (who is, as I am informed and believe, the natural and lawful Father of the said A B, late of , deceased, the said E B being a patient under the care of my fellow Deponent, the said E F at the Asylum or House for the reception of Lunatics, at aforesaid, and that the said E B hath been for many years, and now is, a Lunatic, and totally incapable of managing himself or his affairs, or of doing any act whatever requiring thought, judgment or reflection, and is not likely soon to recover the use of his mental faculties.

And I, the said E F for myself make oath, that I am a nurse at the said Lunatic Asylum or House for the reception of Lunatics, where the said E B is now confined, and that the said E B hath been for years, last past, confined thereat, and has been under my care as a person of unsound mind, and that he is a Lunatic and totally incapable of managing himself or his affairs.

Sworn at	this		
day of	18	by the said	
C D	and E F		C D
Before me,			E F
T M			
A Commissioner, &c.			

## 11

## AFFIDAVIT ON ACCEPTING GUARDIANSHIP OF INFANT.

Affidavit on  
accepting  
Guardianship  
of Infant.

IN HER MAJESTY'S COURT OF PROBATE.

The Principal Registry.

In the Goods of A B, deceased, I, C D, of , make oath and say as follows :—

The said A B, late of , died at aforesaid on the day of , 18 , intestate, a Widower, leaving E F, his natural, and lawful, and only child, who is now an infant of the age of six years and upwards, but under

the age of seven years, and who, therefore, as I am advised, is by Law incapable of acting in his own name, and of electing a Guardian to act on his part and behalf.

I am the lawful Grandfather and next of kin of the said Infant, and I am ready and willing to undertake the Guardianship of the said Infant for the purpose of taking Letters of Administration of the personal Estate and Effects of the said A B, deceased, for the use and benefit of the said Infant until he shall attain the age of twenty-one years.

Sworn by the said C	D	}	C	D
at this	day of			
18				
Before me,				
T	M			
A Commissioner, &c.				

## ATTACHMENT.

12

IN HER MAJESTY'S COURT OF PROBATE.

VICTORIA, by the Grace of God of the United Kingdom of Attachment.  
Great Britain and Ireland, Queen, Defender of the Faith, To the Sheriff of our County of

GREETING, WE COMMAND YOU to attach the person of J B, of, in the County of, Spinster, so as to have her before us in our Court of Probate at Westminster, whensoever the said Court shall sit there to answer to us as well touching a contempt which she as it is alleged has committed against us, as also such other matters as shall be then and there laid to her charge. And further to perform and abide such Order as our said Court shall make in this behalf. And thereof fail not and bring this Writ with you.

Witness ourself at Westminster, the day of  
186 in the year of our Reign.

Attachment.

S &amp; S,

Solicitors,

Street, London.

## ENDORSEMENT.

By order of the Court at instance of, for non-payment of Costs (or as the case may be).

## PRÆCIPE FOR ATTACHMENT.

IN HER MAJESTY'S COURT OF PROBATE.

B v. S &amp; W.

Seal an Attachment directed to the Sheriff of our County Præcipe for Attachment.

of \_\_\_\_\_, for breach of an Order, dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, made in the matter of B \_\_\_\_\_ v. H \_\_\_\_\_ & W \_\_\_\_\_, in not paying or causing to be paid to S \_\_\_\_\_ & S \_\_\_\_\_, the Solicitors of R \_\_\_\_\_ S \_\_\_\_\_, the sum of £ \_\_\_\_\_, being the amount which appears by the Affidavit of L \_\_\_\_\_ S \_\_\_\_\_ to be due to them for taxed costs of the above Suit, and also the costs in obtaining the said Order as by the said Order the said J \_\_\_\_\_ B \_\_\_\_\_ was commanded.

S \_\_\_\_\_ S \_\_\_\_\_,  
Solicitors,  
Street, London.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

## 13

## BOND FOR SECURITY FOR COSTS.

KNOW ALL MEN BY THESE PRESENTS THAT WE

are held and firmly bound unto C \_\_\_\_\_ L \_\_\_\_\_ and H \_\_\_\_\_ R \_\_\_\_\_ L \_\_\_\_\_ in the penal sum of \_\_\_\_\_ pounds of good and lawful money of Great Britain, to be paid to the said C \_\_\_\_\_ L \_\_\_\_\_ and H \_\_\_\_\_ R \_\_\_\_\_ L \_\_\_\_\_. For which payment to be well and truly made, we bind ourselves and each of us for the whole, our Executors or Administrators firmly by these Presents, Sealed with our Seals. Dated the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, One thousand eight hundred and \_\_\_\_\_.

WHEREAS there is a certain Cause of \_\_\_\_\_ now depending in Her Majesty's Court of Probate between O \_\_\_\_\_ L \_\_\_\_\_ Esquire, Plaintiff, of the one part, and M \_\_\_\_\_ S \_\_\_\_\_ E \_\_\_\_\_, Defendant, of the other part. And Whereas the Right Honorable Sir \_\_\_\_\_, Knight, the Judge of Her Majesty's said Court of Probate, rightly and duly proceeding in the said Cause hath, by Order dated the \_\_\_\_\_ day of \_\_\_\_\_, One thousand eight hundred and \_\_\_\_\_ decreed (amongst other things) that a sum of money be paid by the Plaintiff into Court, or that (if the Registrars thought fit) he, the said Plaintiff, should give Security for defraying the necessary expenses on the part of the said Defendant of bringing the Cause before the Court for Trial. And Whereas \_\_\_\_\_, Esquire, one of the Registrars of Her Majesty's Court of Probate, to whom it has been referred by the Judge aforesaid to estimate and determine upon the sum of money to be paid into Court, or (if he should see fit to take Security) the sum of money for which Security should be given for defraying the necessary expenses on the part of the Defendant in bringing the Cause before the Court for Trial, in pursuance of the aforesaid Order, having heard the Solicitor of the said Plaintiff and the Proctor

Bond for  
Security for  
Costs.



of the said Defendant thereon, did, on the            day of           , One thousand eight hundred and           , certify under his hand that            pounds was a proper and sufficient sum for defraying the expenses aforesaid, and on the application of the Solicitor for the Plaintiff, directed that sufficient security be taken in the said sum of            pounds from or on behalf of the Plaintiff, notice of such Security being first given to the Proctor of the said Defendant. Now the condition of this obligation is such that if the above bounden,            their Executors or Administrators shall well and truly pay or cause to be paid to the above-named C            L            and H            R            L           , their Executors, Administrators or Assigns the full sum of            pounds of good and lawful money of Great Britain, or the lawful Costs of the said M            S            E, the Defendant in bringing the said Cause before the Court for Trial, to the extent of the said sum of            pounds, then this Obligation is to be void and of none effect, otherwise to remain in full force and virtue.

Signed, Sealed and Delivered }  
in the presence of }

### ASSIGNMENT OF BOND.

IN HER MAJESTY'S COURT OF PROBATE.

The Principal Registry.

### Assignment of Bond.

In the Goods of A                      B                      , deceased, KNOW ALL MEN by these presents that I,                      one of the Registrars of the Principal Registry of Her Majesty's Court of Probate, pursuant to the 83rd Section of the Court of Probate Act, 1858, and by virtue of an Order upon Motion by Counsel of the Right Honourable Sir                      , Knight, Judge of the said Court, made upon me on the                      day of                      , 186                      , have assigned and by these presents do assign to                      of                      , in the County of                      , the person named in the said Order, the annexed Bond bearing date the                      day of                      , 186                      , for the due Administration of the Effects of                      , late of                      , in the County of                      , and all benefit and advantage arising therefrom. In witness thereof I have hereunto set my hand this                      day of                      , 186                      .

Signed, Sealed and Delivered  
in the presence of me,  
A B,  
Principal Registry,  
Court of Probate.

X      Y      ,  
Registrar.

To be sealed  
with a small  
Official Seal.

If the Practitioner bring a sheet of paper with a £1 stamp

impressed thereon the Registrar will write the assignment thereon.

The fee for Assignment is Five Shillings.

The Bond is not given out of the Registry to the party, but attended with as required.

15 BOND TO BE EXECUTED BY A RECEIVER OF REAL  
ESTATE PENDING SUIT.

Bond to be  
executed by a  
Receiver of  
Real Estate  
pending Suit.

KNOW ALL MEN BY THESE PRESENTS that we, A B ,  
of C D , of , and E F , of ,  
are jointly and severally bound unto the Right Honourable  
the Judge of Her Majesty's Court of Probate, in the  
sum of \_\_\_\_\_ pounds of good and lawful money of Great Britain,  
to be paid to the said Right Honourable \_\_\_\_\_, or to the  
Judge of the said Court for the time being, for which payment,  
well and truly to be made, we bind ourselves and every of us  
for the whole, our heirs, executors and administrators firmly by  
these presents. Sealed with our Seals, dated the \_\_\_\_\_ day  
of \_\_\_\_\_ in the year of our Lord One thousand eight hundred and  
sixty \_\_\_\_\_

WHEREAS, G                      H                      , late of                      , died on the                      day of                      , 18                      , at                      , having, as asserted, made and duly executed { his } { her } last Will and Testament, with                      Codicil thereto, bearing date respectively the *(here insert dates of the Testamentary papers)*. And whereas there is now pending in judgment in Her Majesty's Court of Probate a certain cause or suit instituted by I                      J                      , as one of the executors named in the said Will, against K                      L                      , the natural and lawful and only next of kin of the said deceased, touching and concerning the validity of the said Will and Codicil, in which said cause or suit M                      N                      , as the heir-at-law of the said G                      H                      , has been cited to see proceedings, and has entered an appearance, and become a party to the said cause or suit. And whereas the Right Honorable                      , the Judge aforesaid, did, on the                      day of                      , 186                      , after hearing Counsel for and on behalf of all parties to the said cause or suit, appoint the above bounden, A                      B                      as, and to be Receiver of the Real Estate of the said G                      H                      , pending the said cause or suit. Now the condition of this obligation is such, that if the above bounden, A                      B                      , the Receiver of the Real Estate of the said G                      H                      , pending the aforesaid cause or suit, do make a true and perfect Inventory of all the rents, issues and profits of the said Real Estate, which have or shall come to his hands, pos-

session or knowledge, or into the hands, possession or knowledge of any other person for him, and the same so made do exhibit, or cause to be exhibited into the Principal Registry of Her Majesty's Court of Probate when lawfully required so to do, and the same rents, issues and profits do well and truly pay and appropriate according to law, that is to say, in payment and satisfaction of all charges and expenses which are or may be or become legally charged upon and payable out of the said rents, issues and profits, and in the letting and managing of the said Real Estate, and in performing other, the duties committed to him by the Judge aforesaid, and further do make or cause to be made a true and just account of his administration of the said rents, issues and profits which shall be allowed by the said Court, and all the rest and residue of the said rents, issues and profits do deliver and pay under the direction of the said Court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, Sealed and Delivered by the	}	(Signed)	
within named A B C D		A B	L. S.
and E F, in the presence of		C D	L. S.
P Q,		E F	L. S.
A Clerk in the Principal Registry, or a Commissioner or Surrogate authorized to administer Oaths in the Court of Probate.			

## CITATION TO SEE WILL PROVED.

16

IN HER MAJESTY'S COURT OF PROBATE.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, To  
 of , in the County of

WHEREAS, it appears by an Affidavit of A B, of , This Affidavit  
 sworn on , and filed in the Principal Registry of our Court must be made  
 of Probate, that the said A B, of , claiming to be by the Plaintiffs  
 the Executor of C D, late of , deceased, who died or one of them.  
 on or about the day of , 18 , at intends to  
 prove in solemn form of law as well the alleged last Will and  
 Testament of the said deceased, bearing date the day of ,  
 as also the (first) Codicil thereto, bearing date the day of ,  
 (and so on for any other Codicils), and that the said deceased  
 died a Bachelor without Parent (or as the case may be) and that  
 you, the said , are the natural and lawful and only  
 next of kin of the said deceased, and the only person entitled to  
 his personal estate and effects (or as the case may be) in case he



and further do show cause (if you should think it for your interest so to do) why the said Probate should not be revoked and declared null and void in law, and the said Will [and Codicils] pronounced to be null and invalid.

Dated this            day of            , 18    , and in the            year of  
our Reign.            (Signed)    E    F    , Registrar.

Citation to bring in Probate.

*Name of the Practitioner.*

*Indorsement to be made after service.*

This Citation was served by G                  H                  on the within-named  
of                  , at                  , on the                  day of                  , 18                  .  
(Signed)                  G                  H                  .

CITATION TO BRING IN ADMINISTRATION.

IN HER MAJESTY'S COURT OF PROBATE.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To \_\_\_\_\_, of \_\_\_\_\_, in the County of \_\_\_\_\_

WHEREAS it appears by an Affidavit of A B, of , sworn on , and filed in the Principal Registry of our Court of Probate, that C D, late of , deceased, died on , at , and that on the Letters of Administration of the personal estate and effects of the said deceased, on the suggestion that he had died intestate, were granted to you by the authority of our Court of Probate as the and next of kin of the said deceased, and that it has since been discovered that the said C D made and duly executed his last Will and Testament, dated , and thereof appointed executors [*or as the case may be*], and that the said Letters of Administration ought to be called in, revoked, and declared null and void in law: NOW THIS IS TO COMMAND YOU, the said , that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the Principal Registry of Our said Court the said Letters of Administration, and further do show cause (if you should think it for your interest so to do) why the same should not be revoked and declared null and void.

Dated this      day of      , 186      , and in the      year  
of Our reign.      (Signed)      E      F      , Registrar.

Citation to bring in Administration.

*Name of Practitioner.*

*Indorsement to be made after service.*

This citation was served by G H on the within-named , of , at , on the day of 18 (Signed) G H .

This Affidavit  
must be made  
by the Plaintiffs  
or one of them.

## 19

## CITATION TO SEE PROCEEDINGS.

IN HER MAJESTY'S COURT OF PROBATE.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To \_\_\_\_\_, of \_\_\_\_\_, in the County of \_\_\_\_\_

This Affidavit must be made by the party on whose behalf the Citation is extracted.

If heir-at-law recite briefly the order on motion.

WHEREAS it appears by an Affidavit of \_\_\_\_\_, sworn on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, and filed in the Principal Registry of Our Court of Probate, that there is now depending in Our said Court a Cause entitled A \_\_\_\_\_ B \_\_\_\_\_ v. C \_\_\_\_\_ D \_\_\_\_\_, wherein the said \_\_\_\_\_ is proceeding to prove in solemn form of law the alleged last Will and Testament with \_\_\_\_\_ Codicils thereto, of E \_\_\_\_\_ F \_\_\_\_\_, late of \_\_\_\_\_, deceased, who died on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_

And whereas it appears by the said Affidavit that you are the natural and lawful \_\_\_\_\_ and one of the next of kin of the deceased, and a party entitled in distribution to the personal estate and effects of the deceased in case he should be pronounced to have died intestate [*or interested under a former Will of the said deceased, bearing date, &c., or as the case may be*].

Now THIS IS TO GIVE NOTICE TO YOU, THE SAID \_\_\_\_\_ to appear in the said cause, either personally or by your Proctor, Solicitor, or Attorney, should you think it for your interest so to do, at any time during the dependence of the said cause, and before final judgment shall be given therein: AND TAKE NOTICE, that in default of your so doing the Judge of Our said Court of Probate will proceed to hear the said Will [and Codicils] proved in solemn form of law, and pronounce judgment in the said cause, your absence notwithstanding.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, and in the \_\_\_\_\_ year of Our reign.

(Signed) E \_\_\_\_\_ F \_\_\_\_\_, Registrar.

Citation to see Proceedings.

*Name of Practitioner.*

*Indorsement to be made after service.*

This citation was served by G \_\_\_\_\_ H \_\_\_\_\_ on the \_\_\_\_\_ within-named \_\_\_\_\_, of \_\_\_\_\_ at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

(Signed) G \_\_\_\_\_ H \_\_\_\_\_.

## 20

## CITATION AGAINST RESIDUARY LEGATEE AND LEGATEES TO PROPOUND PAPER WRITINGS.

IN HER MAJESTY'S COURT OF PROBATE.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

Citation against Residuary Legatee, and Legatees to Propound Paper Writings.

To H E , of , in the County of ,  
 Spinster, P C H , of , in the County of ,  
 Esquire, P A , of , in the County of , Esquire,  
 P A C , of , in the County of , Esquire,

WHEREAS it appears by an Affidavit of P R M ,  
 of , in the County of , Esquire, sworn on the  
 day of , 186 , and filed in the Principal Registry of our  
 Court of Probate that P K S H , of ,  
 deceased, died on the day of , 186 , at in the  
 County of , a Bachelor, leaving him surviving P

R H , his natural and lawful father and next of kin,  
 and the sole person entitled to his personal estate and effects in  
 case he be pronounced to have died Intestate, that the said  
 P R H hath, by an instrument under his hand and  
 seal, bearing date the day of , 186 , and filed in the  
 Principal Registry of our said Court, renounced his right and  
 title to Letters of Administration, and consented to the same  
 being granted to the said P R M , the natural and  
 lawful brother of the said deceased. And whereas it appears by  
 the said Affidavit that the said deceased left certain paper  
 writings purporting to be a Will and two Codicils thereto, bearing  
 date respectively the day of , 186 , and the  
 day of , 186 , and filed in the Principal Registry of our  
 said Court of Probate, but did not thereof appoint any Executor,  
 but did therein name you, the said H E , residuary  
 Legatee, and you, the said P C H, P A , P

A C , and P F Z , the only Legatees other  
 than the said P R M . Now this is to command  
 you, the said H E , P C H , P

A , and P A C , that within (a) eight days after  
 service hereof on you, inclusive of the day of such service, and  
 you, the said P F Z , that within (b) 30 days after  
 the service on you, inclusive of the day of such service, you  
 and each of you do cause an appearance to be entered for you  
 and each of you in our Court of Probate, and propound the  
 said paper Writings should you or either of you think it for  
 your interest so to do, or show cause why Letters of Adminis-  
 tration of the personal estate and effects of the said deceased as  
 having died intestate should not be granted to the said P R M .  
 And take notice that in default of your or any of your so  
 appearing and propounding the said paper Writings the Judge  
 of our said Court, or the Registrars of the Principal Registry  
 thereof, will proceed to grant Letters of Administration of the  
 personal estate and effects of the said deceased, as having died  
 Intestate to the said P M , your absence notwith-  
 standing.

(a) If the party  
 cited be in Eng-  
 land, Ireland,  
 or Scotland; (b)  
 if Abroad.

Dated this       day of       , 186   , and in the       year of  
our Reign.

X       Y       , Registrar.

Citation.

A.       B       ,  
Solicitor, Temple.

*Indorsement to be made after service.*

This citation was served by G       H       on the within-named  
     , of       , at       , on the       day of       18   .  
(Signed)       G       H       .

## 21 CITATION AT THE INSTANCE OF CREDITOR *v.* EXECUTORS WHO PROVED WILL IN LISBON, AND RESIDUARY LEGATEE TO ACCEPT OR REFUSE PROBATE OR ADMINISTRATION WILL OF COPY WILL.

IN HER MAJESTY'S COURT OF PROBATE.

Citation at the  
instance of  
Creditor *v.*  
Executors who  
proved Will in  
Lisbon, and  
Residuary  
Legatee to  
accept or refuse  
Probate or  
Administration  
Will of copy  
Will.

VICTORIA by the Grace of God of the United Kingdom of  
Great Britain and Ireland Queen, Defender of the Faith. To  
P J S C , A A S P , both of the City of  
Lisbon, and to D M D , and D M D , both  
both of       , in the County of       , Spinsters. Whereas it  
appears by an Affidavit of T F P B , of       , in the  
County of       , Merchant, sworn on the       day of       ,  
186   , and filed in the Principal Registry of our said Court,  
that F S S , late of the City of Lisbon, Merchant,  
deceased died at Lisbon aforesaid on the       day of       , 186   ,  
having made and executed his last Will and Testament, bearing  
date the       day of       18   , and thereof appointed you the  
said P J S C , Executor in the first place, and  
in his default appointed you the said A A S P ,  
Executor, and also named you the said D M D ,  
and D M D Residuary Legatees, and that on the  
     day of       , 18   , the said Will was duly proved at  
Lisbon aforesaid by you the said P J S C , the  
Executor in the first place named therein, and that an official  
copy of the said Will is now remaining in the Principal Registry  
of our said Court, and that the said T F P B is a  
Creditor of the said deceased. Now this is to command you  
the said P J S C and A A S P  
that within 30 days after service hereof on you, inclusive of the  
day of such service, you do cause an appearance to be entered for  
you in the Principal Registry of our said Court, and that you  
the said P J S C and A A S P



or one of you do accept or refuse Probate of the said Will, and that you the said D M D and D M D do accept or refuse Letters of Administration with the said Will annexed of all and singular the personal estate and effects of the said deceased if by law entitled thereto, otherwise that you and each of you do show cause why Letters of Administration with the said Will annexed of all and singular the personal estate and effects of the said deceased should not be committed and granted to the said T F P B, a Creditor of the said deceased. And take notice that in default of your so appearing, accepting and extracting the said Probate or Letters of Administration with the said Will annexed, the Judge of our said Court or the Registrars of the Principal Registry thereof, will proceed to grant Letters of Administration with the said Will annexed to the said T F P B, your absence notwithstanding.

Dated this       day of       , in the       year of our Lord, 186       , and in the       year of our Reign.

X Y       , Registrar.

Citation.

S       & M       ,  
Temple.

*Indorsement to be made after service.*

This citation was served by G H       , on the within-named  
     , of       , at       , on the       day of       , 18       .  
(Signed) G H       .

## CITATION AGAINST UNIVERSAL LEGATEE TO ACCEPT OR REFUSE ADMINISTRATION WILL AT INSTANCE OF CREDITOR.

22

IN HER MAJESTY'S COURT OF PROBATE.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To A B       , of       , in the County of

Whereas it appears by an Affidavit of C D       , of       , in the County of       , sworn on the       day of       , 186       , and filed in the Principal Registry of our said Court, that E F       , late of       , deceased died on the       day of       186       , having made and duly executed his last Will and Testament in writing, bearing date the       day of       , but did not therein name any Executor, but therein named you the said A B       universal Legatee, which said Will is now remaining in the Principal Registry of our said Court, and that

Citation  
against Univer-  
sal Legatee to  
accept or refuse  
Administration  
Will at instance  
of Creditor.

the said C      D      is a Creditor of the said deceased. Now this is to command you the said A      B      that within eight days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Principal Registry of our said Court and accept or refuse Letters of Administration (with the Will annexed) of the personal estate and effects of the said E      F      , deceased, or show cause why such Letters of Administration should not be granted to the said C      D      . And take notice that in default of your appearing, accepting and extracting the said Letters of Administration with the said Will annexed, the Judge of our said Court or the Registrars of the Principal Registry thereof will proceed to grant such Letters of Administration with the said Will annexed to the said C      D      , your absence notwithstanding.

Dated the      day of      , 186      , and in the      year of our Reign.

X      Y      , Registrar.

Citation.

J      B      ,  
Temple.

*Indorsement to be made after service.*

This citation was served by G      H      on the within-named  
of      , at      , on the      day of      , 18      .  
(Signed)      G      H      .

## 23

### CITATION AT THE INSTANCE OF EXECUTOR OF CREDITOR *v.* SISTER TO ACCEPT OR REFUSE ADMINISTRATION.

Citation at the  
instance of  
Executor of  
Creditor *v.*  
Sister to accept  
or refuse Ad-  
ministration.

IN HER MAJESTY'S COURT OF PROBATE.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To

H      S      , of

Whereas it appears by an Affidavit of R      A      , of      , in the County of      , Gentleman, sworn on the      day of      , 186      , and filed in the Principal Registry of our said Court, that J      S      , late a Captain in Her Majesty's service on half-pay, unattached, died at      , in the County of      , on the      day of      , 18      , intestate, a Bachelor without a Parent, leaving surviving him you, the said H      S      , Spinster, his natural and lawful Sister and only next of kin, the only person entitled in distribution to his personal estate and effects. And that the said R      A      is one of the Executors of W      B      , deceased, who was, whilst living, a Creditor of

the said deceased; and that the said R      A      duly proved the Will of the said W      B      in the      Court of in the month of      , 18      , and as such Executor is a Creditor of the said deceased. Now this is to command you, the said      , that within 8 days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Principal Registry of our said Court of Probate, and accept or refuse Letters of Administration of the personal estate and effects of the said deceased, or show good and sufficient cause concludent in Law if you have or know any, why such Letters of Administration should not be granted to the said R      A      , an Executor of the said W      B      deceased, and as such Executor a Creditor of the said deceased. And take notice that in default of your appearing, accepting and extracting the said Letters of Administration, the Judge of our said Court or the Registrars of the Principal Registry thereof will proceed to grant and commit the said Letters of Administration to the said R      A      , your absence notwithstanding.

Dated at London this      day of      , in the year of our Lord 186      , and in the      year of our Reign.

X      Y      , Registrar.

Citation.

S      & S      ,  
Lincoln's Inn.

*Indorsement to be made after service.*

This Citation was served by G      H      , on the within-named      , of      , at      , on the      day of      , 186      .  
(Signed) G      H      .

CITATION AT THE INSTANCE OF A LEGATEE *v.*  
EXECUTOR AND RESIDUARY LEGATEE TO  
ACCEPT OR REFUSE PROBATE OR ADMINIS-  
TRATION WILL OF COPY WILL—THE ORIGINAL  
BEING LOST.

24

Lost Will.

IN HER MAJESTY'S COURT OF PROBATE.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To C      E      D      , of      , in the County of      , Architect and Surveyor.

Whereas it appears by an Affidavit of A      B      , of      , sworn on the      day of      , 18      , filed in the Principal Registry of our said Court, that L      D      , late of      , in the County of      , Widow, deceased, died on      , having made and duly executed her last Will and Testament, bearing date the      day of      , 186      , and thereof appointed you,

Citation at the instance of a Legatee *v.* Executor and Residuary Legatee to accept or refuse Probate or Administration Will of Copy Will—the original being lost.

the said C E D , sole Executor and Residuary Legatee ; and that the said original Will was at the time of the death of the said deceased in the custody and possession of Messrs. T C , of , in the County of , Solicitors, by whose direction a fair copy of the said Will was afterwards made and carefully collated with the said original Will, and which copy is now remaining in the Principal Registry of our said Court, but that the said original Will has since been lost or so mislaid that the same cannot be found. And whereas it also appears by the said Affidavit that the said F D is a Legatee named in the said Will. Now this is to command you, the said C E D , that within eight days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Principal Registry of our said Court, and accept or refuse Probate of the said Will or copy thereof, or Letters of Administration with the Will or copy thereof annexed, of the personal estate and effects of the said deceased if by Law entitled thereto. And take notice that in default of your appearing and accepting and extracting the said Probate or Letters of Administration with Will annexed, the Judge of our said Court or the Registrars of the Principal Registry thereof will proceed to grant Letters of Administration with the said copy Will annexed of the personal estate and effects of the said deceased, limited until the original Will or a more authentic copy shall be brought into and left in the Principal Registry of our said Court, or under such other limitations as the Judge or Registrars may direct to the said F D , your absence notwithstanding.

Dated this       day of       , 18       , and in the       year of our Reign.

X Y , Registrar.

Citation.

R       & M       ,  
Temple.

*Indorsement to be made after service.*

This Citation was served by G H , on the within-named       , of       , at       , on the       day of       , 18       .  
(Signed) G H .

## 25

### CITATION BY ASSIGNED GUARDIAN AGAINST NEXT OF KIN.

IN HER MAJESTY'S COURT OF PROBATE.

Citation by  
assigned  
Guardian  
against next of  
kin.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To J E M , of       , in the County of       , Yeoman.

Whereas it appears by an Affidavit of A W , of , in the County of , Spinster, sworn on the day of , 186 , and filed in the Principal Registry of our Court of Probate, that H W , late of , in the County of , Painter; deceased died on the day of , 186 , having made and duly executed his last Will and Testament, bearing date the day of , 186 , and therein named his Sister, the said A W , sole Executrix and Residuary Legatee, and that the said A W is now a minor of the age of 19 years only, and that you, the said J E M , are the lawful maternal Uncle and only next of kin of the said A W . And whereas the said A W has elected S T , of , in the County of , Accountant, to be her Guardian for the purpose of citing the said J E M to show cause why Letters of Administration (with the Will annexed) of all and singular the personal estate and effects of the said H W , deceased, should not be granted to the said S T for the use and benefit of the said A W , and until she shall attain the age of 21 years. And whereas the said S T has been duly assigned Guardian to the said A W , Spinster, for such purpose. Now this is to command you, the said J E M , that within eight days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Principal Registry of our said Court of Probate, and show good and sufficient cause, if you have or know any, why Letters of Administration (with the said Will annexed) of all and singular the personal estate and effects of the said H W , deceased, should not be granted to the said S T for the use and benefit of the said A W , Spinster, and until she shall attain the age of 21 years. And take notice that in default of your appearing and showing good and sufficient cause, concludent in Law to the contrary, the Judge of our said Court or the Registrars of the Principal Registry thereof will proceed to grant Letters of Administration (with the Will annexed) of all and singular the personal estate and effects of the said H W , deceased, to the said S T , for the use and benefit of the said A W , Spinster, and until she shall attain the age of 21 years, your absence notwithstanding.

Dated the day of , 186 , and in the year of our Reign.

Citation.

X Y , Registrar.

C & S ,  
Temple.

*Indorsement to be made after service.*

This Citation was served by G H , on the within named , of , at , on the day of , 18 .  
(Signed) G H .

## 26

CITATION AT THE INSTANCE OF SISTER CLAIMING  
TO BE NEXT OF KIN *v.* PARTIES CLAIMING TO  
BE CHILDREN TO PROPOUND INTEREST.

Citation at the  
instance of  
Sister claiming  
to be next of  
kin *v.* Parties  
claiming to be  
children to pro-  
pound interest.

## IN HER MAJESTY'S COURT OF PROBATE.

VICTORIA by the Grace of God of the United Kingdom of  
Great Britain and Ireland Queen, Defender of the Faith. To  
D B , the Wife of W B , of , in the  
County of , and G C B , of , in the  
County of .

Whereas it appears by an Affidavit of G C , of ,  
in the County of , Widow, sworn on the day of ,  
186 , and filed in the Principal Registry of our said Court,  
that M E C , late of ; deceased died on or  
about the day of , 186 , at , a Widow and  
Intestate, leaving you, the said D B and G C B ,  
claiming to be her natural and lawful children, and the said  
G C , Widow, her natural and lawful sister, and claiming  
to be one of her next of kin, her surviving. Now this is to com-  
mand you, the said , that within 8 days after service hereof on  
you, inclusive of the day of such service, you do cause an  
appearance to be entered for you in the Principal Registry of  
our Court of Probate and propound your interest, if you shall be  
advised so to do. And take notice that in default of your so  
doing the Judge of our said Court will proceed to make such  
grant in respect of the Estate of the said G C as to  
him shall seem meet, your absence notwithstanding.

Dated the day of , 186 , in the year of our  
Reign.

X Y , Registrar.

Citation.

M T ,  
Temple.

*Indorsement to be made after service.*

This Citation was served by G H , on the within-  
named , of , at , on the day of , 18 .  
(Signed) G H .

Curline, 1858.

A Case in which  
the above Cita-  
tion was used,  
but it is appli-  
cable to others.

In this case the deceased died a Widow, having survived her  
husband about three weeks ; they had lived separately for nearly  
twenty years previously, and this deceased cohabited with another  
man and in that interval two children were born. The deceased  
left a Sister who claimed to be next of kin, and cited these  
Children, who, although they had in reality made no claim, are  
stated to be "claiming to be the natural and lawful Children"  
because they used the name of their Mother and her Husband,  
and, therefore, inferentially claimed to be their Children.

CITATION AT THE INSTANCE OF RESIDUARY  
LEGATEE *v.* EXECUTOR TO WHOM POWER WAS  
RESERVED TO ACCEPT OR REFUSE PROBATE.

27

IN HER MAJESTY'S COURT OF PROBATE.

VICTORIA by the Grace of God of the United Kingdom of  
Great Britain and Ireland Queen, Defender of the Faith. To  
E G, of, in the County of, Shopkeeper.

Citation at the  
instance of  
Residuary  
Legatee *v.*  
Executor to  
whom power  
was reserved to  
accept or refuse  
Grant.

Whereas it appears by an Affidavit of J W, of  
, in the County of, Book-keeper, sworn on the  
day of, 186, and filed in the Principal Registry of  
our said Court, that J W, late of, in the County  
of, Yeoman, deceased, died on the day of, 186,  
having made and duly executed his last Will and Testament,  
bearing date the day of, 186, and thereof appointed  
P B and you, the said E G, Executors, and  
did thereby give and bequeath the residue of his personal estate  
and effects as follows—to wit, one-fourth part thereof unto his  
son, the said J W, one other fourth part thereof unto  
the children of his late daughter Ellen, share and share alike,  
one other fourth part unto his grandson, J R, and the  
remaining fourth part thereof unto the children of his late  
daughter Alice, share and share alike. And that on the day  
of, 186, Probate of the said Will was granted by the  
Court of, to the said P B, one of the  
said Executors, power being reserved to you, the said E G,  
the other Executor named in the said Will. And that the said  
P B for some time intermeddled in the personal estate  
and effects of the said deceased, and afterwards died, to wit, on  
the day of, 186, leaving part thereof unadministered.  
And that you, the said E G, have not as yet taken upon  
yourself the Probate and execution of the said Will. And that  
the said J W intends to apply for Letters of Adminis-  
tration (with the said Will annexed) of the personal estate and  
effects of the said deceased left unadministered as aforesaid, to  
be granted to him as one of the Residuary Legatees named in  
the said Will. Now this is to command you, the said E  
G, that within eight days after the service hereof on  
you, inclusive of the day of such service, you do cause an  
appearance to be entered for you in the Principal Registry  
of our said Court of Probate, and accept or refuse the Probate  
and execution of the said Will of the said deceased, other-  
wise to show good and sufficient cause concludent in Law why  
Letters of Administration (with the said Will annexed) of the  
personal estate and effects of the said deceased left unadministered  
as aforesaid should not be granted to the said J W.  
And take notice that in default of your so doing the Judge of





the said E J , Spinster, all their right, title, and interest in and to such Letters of Administration of the personal estate and effects of the said deceased (such instruments of Election and Renunciation having been respectively duly filed in the Principal Registry of our Court of Probate). And that the said J H A and G J , his Co-partner in trade, are Creditors of the said deceased. Now this is to command you, the said , that within eight days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Principal Registry of our Court of Probate, and accept or refuse Letters of Administration of the personal estate and effects of the said deceased, or show cause, if you have or know any, why such Letters of Administration should not be granted and committed to the said J H A and G J as Creditors of the said deceased. And take notice that in default of your appearing, accepting, and extracting the said Letters of Administration the Judge of our said Court, or the Registrars of the Principal Registry thereof, will proceed to grant Letters of Administration of all and singular the personal estate and effects of the said deceased to the said J H A and G J , your absence notwithstanding.

Dated this day of , in the year of our Lord 186 , and in the year of our Reign.

Citation. X Y , Registrar.

W T ,  
Temple.

*Indorsement to be made after service.*

This Citation was served by G H , on the within-named , of , at , on the day of , 18 .  
(Signed) G H .

## CITATION AT THE INSTANCE OF CREDITOR *v.* WIDOW AND FATHER TO ACCEPT OR REFUSE ADMINISTRATION. 29

IN HER MAJESTY'S COURT OF PROBATE.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To S C , Widow, and J C , of , in the County of

Whereas it appears by an Affidavit of C L , of , in the County of , Gentleman, sworn on the day of , 186 , and filed in the Principal Registry of our said Court, that G C , late of , in the County of ; deceased died on or about the day of , 186 , at ,

*Citation at the instance of Creditor v. Widow and Father to accept or refuse Administration.*

aforesaid, Intestate, without a child, leaving surviving him you, the said S C , Widow, his lawful Relict, and you, the said J C , his natural and lawful Father, together, the only persons entitled in distribution to his personal estate and effects. And that the said C L is a Creditor of the said deceased. Now this is to command you, the said , that within 8 days after service hereof, inclusive of the day of such service, you do cause an appearance to be entered for you in the Principal Registry of our Court of Probate, and accept or refuse Letters of Administration of all and singular the personal estate and effects of the said deceased, or show cause why the said Letters of Administration should not be granted and committed to the said C L . And take notice that in default of your appearing, accepting, and extracting the said Letters of Administration the Judge of our said Court, or the Registrars of the Principal Registry thereof, will proceed to grant such Letters of Administration to the said C L , your absence notwithstanding.

Dated at London the day of , 186 , and in the year of our Reign.

X Y , Registrar.

Citation.

E C ,  
Temple.

*Indorsement to be made after service.*

This Citation was served by G H , on the within-named , of , at , on the day of , 18 .  
(Signed) G H .

## 30

### CITATION AGAINST THE HUSBAND BY A CREDITOR OF THE ESTATE.

IN HER MAJESTY'S COURT OF PROBATE.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To J D , of , in the county of

Whereas it appears by an Affidavit of G W , of , sworn on the day of , 186 , and filed in the Principal Registry of our Court of Probate, that S D , Wife of J D , formerly S B , Widow, late of , aforesaid died on the day of 186 , Intestate, leaving surviving her you, the said I D , her lawful Husband. And whereas it further appears by the said Affidavit that the said G W is a Creditor of the estate of the said deceased. Now this is to command you, the said J D , that within eight days after service hereof on you, inclusive of the day of

Citation  
against the  
Husband by  
a Creditor of  
the Estate.

such service, you do cause an appearance to be entered for you in the Principal Registry of our Court of Probate, and accept or refuse Letters of Administration of all and singular the personal estate and effects of the said deceased, or show cause if you have or know any why the same should not be granted to the said G W as a Creditor of the Estate of the said deceased. And take notice that in default of your so appearing and accepting and extracting the said Letters of Administration the Judge of our said Court, or the Registrars of the Principal Registry thereof, will proceed to grant the said Letters of Administration of all and singular the personal estate and effects of the said deceased to the said G W, your absence notwithstanding.

Dated this       day of       , 186       , and in the       year of our Reign.

Citation to accept or refuse Letters of Administration. }	X       Y       , Registrar.
C       & Co.,	
Solicitors, Temple.	

*Indorsement to be made after service.*

This Citation was served by G H       , on the within-named       , of       , at       , on the       day of       , 18       .  
(Signed)       G       H       .

## CITATION AGAINST THE NEXT OF KIN (IF ANY) AND ALL PERSONS IN GENERAL.

31

IN HER MAJESTY'S COURT OF PROBATE.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To the next of kin, if any, and all other persons in general, having or pretending to have any interest in the personal estate and effects of A B       , late of       , deceased.

Citation  
against next of  
kin (if any),  
and all Persons  
in general.

Whereas it appears by an Affidavit of C D       , of       , sworn on the       day of       , 18       , and filed in the Principal Registry of our Court of Probate, that A B       , late of       ; deceased died on the       day of       , 18       , at       , intestate, a bachelor without parent, brother or Sister, uncle or aunt, nephew or niece, cousin german or any other known relative, and that the said C D       is a creditor of the said deceased. Now this is to command you, the next of kin (if any), and all persons in general, that within thirty days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Principal Registry of our Court of Probate and accept or refuse Letters of Administration of the personal estate and effects of the said A B       , deceased, or show cause why the same should not be granted to

the said C D , as a Creditor of the said deceased. And take notice that in default of your so appearing and accepting and extracting the said Letters of Administration the Judge of our said Court, or the Registrars of the Principal Registry thereof, will proceed to grant Letters of Administration of the personal estate and effects of the said deceased to the said C D , your absence notwithstanding.

Dated the      day of      , in the year 18      , and in the year of our Reign.

X      Y      , Registrar.

Citation.

E      F      ,  
Solicitor,  
Temple.

*Indorsement to be made after service.*

This Citation was served by G      H      , on the within-named      , of      , at      , on the      day of      , 18      .  
(Signed) G      H      .

## CITATION TO EXHIBIT INVENTORY AND ACCOUNT.

### IN HER MAJESTY'S COURT OF PROBATE.

Citation to exhibit Inventory and Account.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To A      B      , of

Whereas it appears by an Affidavit of C      D      , of      , sworn on the      day of      , 18      , and filed in the Principal Registry of our Court of Probate, that on the      day of      , 18      , Letters of Administration of the personal estate and effects of E      B      , late of      , deceased, were granted by our said Court to the said A      B      , the lawful widow and relict of the said deceased. And whereas it further appears by the said Affidavit that the said C      D      is a Creditor of the said deceased. Now this is to command you the said A      B      , that within eight days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Principal Registry of our Court of Probate, and by virtue of your corporal oath exhibit, bring into, and leave in the Principal Registry of our said Court a true and perfect inventory of all and singular the personal estate and effects of the said deceased which have

at any time since his death come to your hands, possession, or knowledge, and by virtue of your like oath render a just and true account of your administration thereof.

Dated this       day of       , 186       , and in the       year  
of our Reign.

Citation. X Y, Registrar.

W E  
Temple.

*Indorsement to be made after service.*

This Citation was served by G H , on the within-named , of , at , on the day of , 18 .  
(Signed) G H .

CITATION AT THE INSTANCE OF ADMINISTRATRIX  
OF SON *v.* THE SURVIVING EXECUTOR AND  
RESIDUARY LEGATEE FOR LIFE IN CASE OF  
SON'S DEATH TO PROPOUND A COPY OF A  
COPY OF A WILL.

33

IN HER MAJESTY'S COURT OF PROBATE.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To E M , of

Whereas it appears by the joint Affidavit of E S, of , Widow, and W W, of , Gentleman, sworn on the day of , and filed in the Principal Registry of our Court of Probate, that M H, late of Widow, deceased died on , 18 , having made her last Will and Testament, bearing date the day of , 18 , and thereof appointed the Rev. R D and G M Executors, and E N Residuary Legatee for life in case of the death of her son, T H, that no Probate or Letters of Administration of the said Will hath or have been obtained, and the said G M, is since deceased, and that it is not known where the said R D is to be found. And it further appears that the original Will is so lost or mislaid that the same cannot now be found, but that a Copy thereof was discovered which is also so lost or mislaid that the same cannot now be found, but of which Copy a Copy was made which is now remaining in the Principal Registry of our Court of Probate; that an Advertisement has been inserted in a newspaper called the *Durham Advertiser*, of the day of , 18 , for such original Will but no answer has been received to such Advertisement; and that the said deceased left her surviving the said T H, her natural and lawful child and only next of kin, and that the said T H has since

departed this life, having made his last Will and Testament, dated the      day of      , 18      , without having therein named any Executor, but thereof appointed E      S      , one of his Residuary Legatees, who, on the      day of      , 18      , duly obtained Letters of Administration with the Will annexed of the said T      H      , deceased, to be granted to her by the authority of the Prerogative Court of Canterbury. Now this is to command you the said      that within      days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Principal Registry of our said Court of Probate and propound the said Copy, if you shall think it for your interest so to do. And take notice that in default of your so doing the Judge of our said Court will proceed herein according to Law, your absence notwithstanding.

Dated at London this      day of      , 18      , and in the year of our Reign.

X      Y      , Registrar.

Citation.

W      E      ,  
Temple.

*Indorsement to be made after service.*

This Citation was served by G      H      , on the within-named      , of      , at      , on the      day of      , 18      .  
(Signed) G      H      .

### 34

#### CITATION TO ACCEPT OR REFUSE ADMINISTRATION OR SHOW CAUSE WHY LIMITED ADMINISTRATION SHOULD NOT BE GRANTED.

IN HER MAJESTY'S COURT OF PROBATE.

Citation to accept or refuse Administration, or show cause why limited administration should not be granted.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To H      L      , of      , Widow.

Whereas it appears by an Affidavit of M      S      , of      , Widow, sworn on the      day of      , 18      , and filed in the Principal Registry of our Court of Probate, that W      M      , late of      , deceased, by his Will dated the 12th day of November, 1811, with a Codicil thereto (amongst other things) gave and bequeathed the residue of his personal estate and effects unto his Nephew, W      M      , and B      D      upon trust as to his share in the Bath Fire Office, subject to the life interest therein of his Brother, M      M      , and of E      M      , wife of his Nephew M      M      (since respectively deceased), and in case the said E      M      should not have any son living at her death to transfer and assign the said share unto his, the said Testator's

Nephews G M and the said W M in equal shares absolutely. And he thereby appointed the said W M and B D Executors, who duly proved the said Will and Codicil in the Prerogative Court of Canterbury, in the month of August, 1812, and afterwards respectively died, and that Letters of Administration with the Will annexed of the personal estate and effects of the said deceased, left unadministered by the said W M and B D were, to wit, in the month of October, 1827, granted by authority of the said Prerogative Court of Canterbury to the said E M, the Residuary Legatee for life named in the said Will. And whereas it appears by the said Affidavit that the share of the said W M, deceased, in the Bath Fire Office was afterwards converted into money, and the money arising therefrom, amounting to the sum of £500, was paid to the said E M as the Administratrix, with the Will annexed of the unadministered personal estate and effects of the said deceased, by whom the same was laid out and invested in the purchase of £516 6s. 8d. Three per cent. Consolidated Annuities in the name of the said E M, W H, and C E. And whereas it appears by the said Affidavit that the said W H and C E respectively died in the lifetime of the said E M. And that the said E M died a Widow and Intestate on the 23rd day of July, 1858, leaving no Son her surviving. And that you the said H L are her natural, and lawful, and only child, and the only person entitled to her personal estate and effects. And that Letters of Administration of the personal estate and effects of the said deceased have not as yet been granted to any person whomsoever, so that there is not any personal representative of her competent to assign and transfer the said sum of £516 6s. 8d. Three per Cent Consolidated Annuities which is still standing in the name of the said deceased, as survivor in a joint account with the said W H and C E in the books kept at the Bank of England. And whereas it appears by the said Affidavit that the said G M, the Nephew of the said W M, deceased, survived him, and together with the said W M became the sole persons beneficially interested in the share of the said W M in the Bath Fire Office, subject to the life interest therein of the said M M and E M. And that the said G M hath since died intestate. And that the said M S widow, is the Administratrix by authority of the Prerogative Court of Canterbury of the personal estate and effects of the said G M, deceased. And that the said W M, also deceased, made and duly executed his last Will and Testament and thereof appointed his Wife M M sole executrix and Residuary Legatee, who duly proved the same in the month

of \_\_\_\_\_, 1821, in the said Prerogative Court of Canterbury, and hath since died a Widow, and Intestate, leaving M \_\_\_\_\_ D \_\_\_\_\_, Widow, E \_\_\_\_\_ W \_\_\_\_\_, Widow, and J \_\_\_\_\_ J \_\_\_\_\_, wife of C \_\_\_\_\_ G \_\_\_\_\_ J \_\_\_\_\_, her natural, and lawful, and only children, the only persons entitled to her personal estate and effects who have in and by an instrument under their respective hands and seals, and also under the hand and seal of the said C \_\_\_\_\_ G \_\_\_\_\_ J \_\_\_\_\_, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ 1858, and filed in the Principal Registry of our said Court, consented that Letters of Administration of the personal estate and effects of the said E \_\_\_\_\_ M \_\_\_\_\_, deceased, under the limitations hereinafter mentioned should be granted and committed to the said M \_\_\_\_\_ S \_\_\_\_\_. Now this is to command you, the said \_\_\_\_\_, that within 8 days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Principal Registry of our said Court, and accept or refuse Letters of Administration of all and singular the personal estate and effects of the said E \_\_\_\_\_ M \_\_\_\_\_, deceased, or otherwise show cause why Letters of Administration of the personal estate and effects of the said deceased, limited to the said sum of £516 6s. 8d. Three per cent. Consolidated Annuities, standing in the name of the said deceased as aforesaid, and the dividends and interest which may hereafter become payable in respect of the same, but no further or otherwise should not be granted to the said M \_\_\_\_\_ S \_\_\_\_\_. And take notice that in default of your so appearing, accepting and extracting the said Letters of Administration the Judge of our said Court, or the Registrars of the Principal Registry thereof, will proceed to grant and commit Letters of Administration of the personal estate and effects of the said E \_\_\_\_\_ M \_\_\_\_\_, deceased, under the limitations aforesaid or under such other limitations as to the Judge or Registrars shall seem meet to the said M \_\_\_\_\_ S \_\_\_\_\_, your absence notwithstanding.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, in the \_\_\_\_\_ year of our Reign.

X \_\_\_\_\_ Y \_\_\_\_\_, Registrar.

Citation.

W \_\_\_\_\_ E \_\_\_\_\_,  
Temple.

*Indorsement to be made after service.*

This Citation was served by G \_\_\_\_\_ H \_\_\_\_\_, on the within-named \_\_\_\_\_, of \_\_\_\_\_, at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

(Signed) G. \_\_\_\_\_ H. \_\_\_\_\_



CITATION TO SEE WILL PROVED IN SOLEMN FORM  
VOLUNTARILY PROPOUNDED AFTER HAVING  
BEEN PROVED IN COMMON FORM.

35

IN HER MAJESTY'S COURT OF PROBATE.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To J C , of , Widow, C L C , of , Esquire, J C T , of , Esquire, E C , Wife of C P , of , Merchant, L J F , Wife of the Reverend M F , of , Clerk, M A B , Wife of W B , of , Gentleman, and H C T , of , Spinster.

Citation to see Will proved in solemn form after having been proved in common form.

Whereas it appears by the joint Affidavit of S B , of , Esquire, and S M D , of , Esquire, sworn by them severally on the day of , 186 , and which Affidavit is filed in the Principal Registry of our Court of Probate, that T B C , late of , Esquire, deceased died on the day of , 185 , having first made and duly executed his last Will and Testament, bearing date at the commencement thereof the 26th day of July, 1858, and at the end thereof the 27th day of July, 1858, with a Codicil thereto bearing date the 9th day of August, 1858, and thereof appointed the said S B and S M D Executors, and that Probate in common form of the said Will and Codicil was granted to the said S B and S M D , on the day of , 1858, by Her Majesty's Court of Probate, and which Probate now remains in the Principal Registry of our said Court. And whereas it further appears by the said Affidavit that the said deceased died without Child, leaving you the said J C his lawful Widow and Relict, and you the said C L C , J C T , E C , L J F , M A B , and H C T , his lawful Nephews and Nieces and only next of kin, and the only persons entitled in distribution to his personal estate and effects, him surviving. And whereas the said S B and S M D , as such Executors of the said T B C , deceased, intend to prove in solemn form of Law as well the said last Will and Testament of the said deceased, as also the said Codicil thereto. Now this is to command you the said J C , C L C , J C T , E C , L J F , M A B , and H C T that within days after service on you respectively, inclusive of the day of such service, you do cause an appearance to be entered for you in the Principal Registry of our Court of Probate in support of any interest you may have in the estate and effects of the said deceased. And take notice that in default

of your so doing the Judge of our said Court will proceed to hear the said Will and Codicil proved in solemn form of Law, and to pronounce sentence in regard to the validity of the same, your absence notwithstanding.

Dated this       day of       , One thousand eight hundred and       , and in the       year of our Reign.

X       Y       , Registrar.

Citation to see Will propounded.

J       C       ,  
Old Jewry,  
London.

*Indorsement to be made after service.*

This Citation was served by G       H       , on the within-named       , of       , at       , on the       day of       , 18       .

(Signed) G       H       .

### 36 CITATION TO SEE DRAFT OF DESTROYED WILL PROVED IN SOLEMN FORM.

IN HER MAJESTY'S COURT OF PROBATE.

Citation to see  
draft of destroy-  
ed Will proved  
in solemn form. VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To A       S       , Wife of G       S       , of       , and T       W       ,  
of

Whereas it appears by an Affidavit of M       W       , of       , Widow, sworn on the       day of       , 185       , and filed in the Principal Registry of our Court of Probate, that J       W       , late of       , made and duly executed his last Will and Testament in writing, dated the       day of       , 185       , and thereof appointed the said M       W       sole executrix, and that the said Will was afterwards inadvertently destroyed by the said deceased by his throwing the same into a fire, together with some valuable securities for money, but without any intention to revoke the same, and that the original Draft of the said Will was until lately in the possession of S       C       V       , the Solicitor who prepared the same for the said deceased, and that the said M       W       intends to prove in solemn form the said Draft of the said last Will and Testament of the said deceased, bearing date the       day of       , 185       , as aforesaid, which Draft Will is now remaining in the Principal Registry of our said Court; and it also appears by the said Affidavit that you the said A       S       and F       W       , together with the said M       W       , are the only persons entitled in distribution to the personal estate and effects of the said deceased in case he be pronounced to have died intestate. Now this is to command you, the said       ,

that within days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Principal Registry of our said Court of Probate in support of any interest you may have in the personal estate and effects of the said deceased. And take notice that in default of your so doing the Judge of our said Court will proceed to hear the said Draft of the said last Will and Testament of the said deceased proved in solemn form of Law, and to pronounce sentence in regard to the validity of the same, your absence notwithstanding.

Dated this            day of            18    , and in the            year of our Reign.

X    Y    , Registrar.

Citation.

F            & L            ,  
Bloomsbury Square.

*Indorsement to be made after service.*

This Citation was served by G            H            , on the within-named            , of            at            , on the            day of            , 18    .

(Signed)            G            H            .

## THE FOLLOWING CASES SHOW EVERY VARIETY OF CITATION WHICH ISSUED FROM THE PREROGATIVE COURT DURING THREE YEARS. 37

They show the parties Cited to accept or refuse Grants; Citations against persons who intermeddled in the Goods of the deceased; the parties to Causes commenced by Citation, and the parties who have been Cited to bring in Inventory and Account.

Citations are not now used to enforce the bringing in of Wills, nor "to see portions allotted and distribution made." In other respects these might be notes of cases in the Probate Court, and they are inserted in the belief that they will tend to make the young practitioner better acquainted with the interests of parties and the nature of Citations—these being now the same as in the Prerogative Court.

### CITATIONS TO ACCEPT OR REFUSE GRANTS.

#### NOMINEE IN CHANCERY *v.* EXECUTORS AND OTHERS.

A business of citing the surviving Executors (to whom power had been reserved in the Grant of Probate), the Residuary

The Commis-  
sioners and  
Governor of  
Greenwich Hos-  
pital *v.* Water-  
house, May  
1827.

Legatees in Trust, and the absolute Residuary Legatees to accept or refuse Probate of the Will of the deceased, or Letters of Administration de bonis non, or to show cause why Administration (limited to substantiate proceedings in Chancery) should not be granted to a Nominee.

### CREDITOR *v.* WIDOW AND CHILD.

Vincent *v.* God-  
dard and Butler  
June 1827.

A business of citing the Widow and Child of the deceased to accept or refuse Letters of Administration, or show cause why the same should not be granted to a Creditor.

### CREDITOR *v.* NEXT OF KIN:

How *v.* How  
and others,  
July 1827.

A business of citing the next of kin to accept or refuse Letters of Administration, or show cause why the same should not be granted to a Creditor.

### RESIDUARY LEGATEE *v.* EXECUTORS.

Clark *v.* Harris  
and another,  
November 1827.

Citing the Executors named in the Will of the deceased to accept or refuse Probate thereof, or show cause why Letters of Administration with the said Will annexed should not be granted to the Residuary Legatee therein named.

### SUBSTITUTED RESIDUARY LEGATEES *v.* RESIDUARY LEGATEE FOR LIFE.

Croswaite *v.*  
Croswaite,  
December 1827.

Citing the Residuary Legatee for life to accept or refuse Letters of Administration with Will annexed, or show cause why the same should not be granted to one of the substituted Residuary Legatees therein named.

### NOMINEE IN CHANCERY *v.* NEXT OF KIN.

Lee *v.* Brutton  
and others,  
January, 1828.

Citing the next of kin to accept or refuse Letters of Administration of the Goods of the deceased, or show cause why the same (limited to substantiate proceedings in Chancery) should not be granted to a Nominee.

### LEGATEE *v.* NEXT OF KIN.

Hill *v.*  
Cunninghame,  
January, 1828.

Citing the next of kin to accept or refuse Administration with the Will annexed of the Goods of the deceased, or show cause why the same should not be granted to the sole Legatee named in the said Will, no Executor or Residuary Legatee being named therein.

### PARTY IN DISTRIBUTION *v.* NEXT OF KIN.

Ford *v.* Ford,  
February, 1828.

Citing the next of kin to accept or refuse Letters of Administration of the Goods of the deceased, or to show cause why the same should not be granted to a Party entitled in Distribution.

CREDITOR *v.* NEXT OF KIN.

Citing the next of kin to accept or refuse Letters of Administration of the Goods of the deceased, or show cause why the same should not be granted to a Creditor. Hartley *v.* Lopes, February, 1823.

LEGATEE *v.* EXECUTORS.

Citing the Executors named in the Will of the deceased to bring in the said Will and accept Letters of Administration with the same annexed, promoted by the Husband of the deceased a Legatee therein named. Powell *v.* Buckingham and James, March 1828.

REPRESENTATIVE OF CREDITOR *v.* EXECUTORS.

Citing the Executors named in the Will of the deceased, and also the Representatives of the Residuary Legatee therein named to accept or refuse Probate of the said Will or Letters of Administration with the same annexed, or show cause why Letters of Administration with the said Will annexed should not be granted to the Representative of a Creditor. Woodcock *v.* Clarke and others, June, 1828.

NOMINEE OF CREDITORS *v.* EXECUTRIX.

Citing the Executrix named in the Will of the deceased to accept or refuse Probate thereof, or show cause why Letters of Administration (limited to substantiate proceedings in Chancery) should not be granted to a Nominee, promoted by Creditors. Kerr *v.* The Marchioness of Hastings, June, 1828.

CREDITOR *v.* PARTIES IN DISTRIBUTION.

Citing the Parties entitled in distribution to accept or refuse Letters of Administration of the Goods of the deceased, or show cause why the same should not be granted to a Creditor. Godeon *v.* Gill and others, September, 1828.

CREDITOR *v.* RESIDUARY LEGATEE.

Citing the Residuary Legatee named in the Will of the deceased to accept or refuse Letters of Administration with the said Will annexed, or show cause why the same should not be granted to a Creditor. Moore *v.* Sarrazin, November, 1828.

RESIDUARY LEGATEE *v.* EXECUTOR.

Citing the Executor named in the Will of the deceased to bring in the said Will and accept or refuse Probate thereof, or show cause why Letters of Administration with the same annexed should not be granted to one of the Residuary Legatees therein named. Dean *v.* Davidson, January, 1829.

NOMINEE IN CHANCERY *v.* REPRESENTATIVES OF EXECUTOR.

Citing the Representatives of the Executor of the Will of the deceased to accept or refuse Letters of Administration with the Will annexed of the unadministered Goods of the said deceased, or show cause why the same (limited to substantiate proceedings in Chancery) should not be granted to a Nominee. The King of the Netherlands *v.* Macgregor and others, January, 1829.

**SUBSTITUTED RESIDUARY LEGATEE *v.* EXECUTOR.**

*Jourdain v.*  
*Jourdain, May,*  
*1829.*

Citing the Executor named in the Will of the deceased to accept or refuse Probate of the said Will, or show cause why Letters of Administration with the same annexed should not be granted to the substituted Residuary Legatee.

**NOMINEE OF CREDITORS *v.* NEXT OF KIN.**

*Blake and*  
*others v. Bean*  
*and others,*  
*August, 1829.*

Citing the next of kin of the deceased to accept or refuse Letters of Administration, or show cause why the same (limited to the interest to be derived from a certain Policy of Insurance) should not be granted to a Nominee, promoted by Creditors of the deceased's estate.

## CITATIONS AGAINST PARTIES WHO INTERMEDDLED IN THE GOODS OF THE DECEASED.

**LEGATEE *v.* EXECUTORS.**

*Taylor v.*  
*Rickman and*  
*Moline,*  
*November, 1827.*

Citing the Executors (who had intermeddled in the Goods of the deceased) to bring in his Will and accept Probate thereof, promoted by a Legatee named in the said Will.

**LEGATEES *v.* ONE OF EXECUTORS.**

*Lewis and*  
*others v. Lewis.*  
*July, 1828*

Citing one of the Executors named in the Will of the deceased, who had intermeddled in his Goods, to bring in the said Will and take upon him the Probate thereof, promoted by the Legatees named in the said Will.

## CITATIONS IN CONTENTIOUS BUSI- NESS WHICH ISSUED FROM THE PREROGATIVE COURT.

**EXECUTRIX *v.* LEGATEE UNDER CODICIL.**

*Fagg v Fagg,*  
*January, 1827.*

Citing a Legatee under a Codicil to propound the said Codicil or show cause why Probate of the Will alone should not be granted to the Executrix named in the said Will.

**EXECUTORS *v.* EXECUTRIX & UNIVERSAL LEGATEE.**

*Maule v. Young*  
*and Young,*  
*March, 1827.*

Citing the Executrix and Universal Legatee named in a Will, dated in 1826, to bring in and propound the same, or to show cause why Probate of a Will, dated in 1825, granted to the Executors therein named should not be confirmed.

**EXECUTORS *v.* LEGATEES UNDER CODICIL.**

Citing the Legatees under a Codicil to propound the same, or show cause why Probate of the Will alone should not be confirmed, promoted by the Executors of the Will.

*Jameson v. Cookson,*  
March, 1827.

**RESIDUARY LEGATEES *v.* EXECUTORS.**

Citing the Executors of the Will of the deceased of which they had obtained Probate to bring in Probate, and show cause why the same should not be revoked and the said Will declared invalid, and why Letters of Administration, with a Will without date annexed, should not be granted to the Residuary Legatee therein named.

*Brown v. Green and Green,*  
May, 1827.

**LEGATEE *v.* EXECUTOR.**

Citing the Executor to bring in the Probate of the Will and Codicil of the deceased granted to him, and show cause why the said Probate should not be revoked, and the said Codicil declared invalid; and why Probate of the Will alone should not be granted to him, promoted by a Legatee under the Will whose Legacy was revoked by the said Codicil.

*Mackenzie v. Handisyde,*  
May, 1827.

**REPRESENTATIVE OF LEGATEE *v.* NEXT OF KIN.**

Citing the next of kin of the deceased who, under the impression that the deceased died intestate, had obtained Letters of Administration, to bring in the said Letters of Administration and show cause why the same should not be revoked, and also to see the Will propounded—promoted by the Representative of a Principal Legatee named in the said Will.

*Roles v. Fellows*  
May, 1827.

**EXECUTRIX *v.* NEXT OF KIN.**

Citing one of the next of kin to whom Letters of Administration had been granted to bring in the said Letters of Administration and show cause why the same should not be revoked as having been unduly obtained, and why Probate of certain Papers as together containing the Will of the deceased should not be granted to the Executrix therein named.

*Chatterton v. Nicholls,*  
June, 1827

**LEGATEE IN A CODICIL *v.* EXECUTRIX.**

Citing the Executrix to whom Probate of the Will of the deceased had been granted to accept Probate of a Codicil thereto or show cause to the contrary—promoted by a Legatee named in the said Codicil.

*Cropley v. Drew,*  
July 1827.

**RESIDUARY LEGATEE *v.* NEXT OF KIN.**

Citing the next of kin to show cause why Letters of Administration with the Will annexed (as contained in a Paper prepared after the deceased's death, from verbal instructions previously given by him) should not be granted to the Residuary Legatee therein named.

*Burrows v. Burrows,*  
August, 1827.

MINORS *v.* NEXT OF KIN.

Trowse *v.*  
Willsher and  
Semple,  
August, 1827.

Citing three of the next of kin to show cause why Administration should not be granted to the Guardian of two other of the next of kin who were Minors, until they should attain their majority.

NEXT OF KIN *v.* NEXT OF KIN.

King *v.* Neely  
and Neely,  
September, 1827.

Citing one of the next of kin to bring in the Letters of Administration granted to her and shew cause why the same should not be revoked as having been surreptitiously obtained and why Letters of Administration should not be granted to another of the next of kin.

EXECUTORS *v.* LEGATEES UNDER CODICILS.

Bewickson *v.*  
Clarkson,  
November, 1827.

Citing the Legatees under certain Codicils to show cause why Probate of the Will and one Codicil only should not be granted to the Executors therein named.

EXECUTORS *v.* UNIVERSAL LEGATEE.

Mackenzie *v.*  
Wall,  
November, 1827.

Citing the Universal Legatee named in a Will of the deceased to show cause why the Letters of Administration with the said Will annexed granted to her, should not be revoked as having been unduly obtained, and why Probate of another Will should not be granted to the executors thereof.

RESIDUARY LEGATEE *v.* PARTIES IN DISTRIBUTION.

Manley, *v.*  
Lakin and  
others,  
November, 1827.

Citing the parties entitled in distribution to see the Will of the deceased propounded and other acts done, promoted by the Residuary Legatee named in the said Will.

EXECUTORS *v.* NEXT OF KIN.

Druce *v.* Farwig  
December, 1827.

Citing the next of kin of the deceased to see an unfinished paper propounded, and other acts done, promoted by the Executors therein named.

REPRESENTATIVE OF SURVIVING EXECUTOR *v.*  
NEXT OF KIN.

Cooper *v.*  
Devriemic,  
January, 1828.

Citing the next of kin and the Legatees named in a Will which had been cancelled to see the Will of the deceased (already proved in common form) propounded, and other acts done, promoted by the representative of the surviving Executor named in the said Will.

EXECUTORS *v.* LEGATEES.

Edwards and  
Edwards *v.*  
Astley and  
others, and  
Illid Nicholl,  
H.M.P.G., Esq.,  
in special and  
others in  
general.

Citing certain Legatees whose interests were affected by pencil alterations made by the Testator in his Will, and all persons in general to see the said Will propounded, and other acts done, promoted by the Executors named in the said Will.



### REPRESENTATIVE OF COUSIN *v.* NOMINEE OF HIS MAJESTY.

Citing the Nominee of His Majesty to bring in the Letters of Administration, granted to him under the suggestion that the deceased died without any relative, and to show cause why the same should not be revoked, and why Administration should not be granted to the representative of a Cousin of the deceased.

*Campbell v. Manle, Nominee of His Majesty,*  
February, 1828.

### EXECUTRIX *v.* LEGATEES.

Citing the Legatees named in an imperfect paper to bring in and propound the same or show cause why Probate of the Will alone should not be granted to the Executrix therein named.

*Diminore and others v. O'Connor and others,*  
February, 1828.

### EXECUTORS *v.* PERSONS PREJUDICED BY UNFINISHED PAPERS.

Citing certain persons whose interests were prejudiced by unfinished papers to see the same propounded as Codicils to the Will of the deceased, and other acts done, promoted by the Executors of the said Will.

*Brindley and Heath v. Adams and others,*  
February, 1828.

### LEGATEE *v.* EXECUTRIX.

Citing the Executrix who had obtained Probate of the Will of the deceased, to bring in a Codicil thereto, and accept Probate of the same, promoted by a Legatee named in the said Codicil.

*Lake v. Lake and others,*  
February, 1828.

### EXECUTORS *v.* EXECUTRIX.

Citing the Executrix of the Will of the deceased (who was under coverture, and had made her Will in virtue of the powers vested in her by the second Codicil to the Will of her mother) to bring in the Letters of Administration with the Will annexed granted to her, and show cause why the same should not be revoked, and why Probate of the said will, limited to the effects of which the said deceased had power to dispose under the said Codicil, should not be granted to her, and also of citing other persons who, under a certain Settlement, would have been entitled to the property of which the deceased disposed, if she had died intestate, to see a Will of an earlier date propounded, and other acts done, promoted by the Executors named in the said will.

*Draper . Hitch and others,*  
February, 1828.

### CREDITOR *v.* NOMINEE OF CERTAIN PERSONS.

Citing the Nominee of certain persons (who had obtained Letters of Administration limited to assign a term of years, without the representative of the next of kin having been cited) to bring in the said Letters of Administration, and show cause why the same should not be revoked, as having been unduly obtained, and why Letters of Administration, *de bonis non*,

*Skeffington v. White, March,*  
1828.

should not be granted to the aforesaid representative of the next of kin, who formerly had renounced their right to Letters of Administration, in order that the same might be granted to a creditor.

### NEXT OF KIN *v.* EXECUTORS AND LEGATEES.

Faton *v.* Eaton,  
and others,  
April, 1828.

Citing the Executors and the Legatees named in the Will of the deceased to bring in and propound the said Will or show cause why Letters of Administration should not be granted to the next of kin.

### RESIDUARY LEGATEES *v.* NEXT OF KIN.

Snow and Snow  
*v.* Snow and  
others, June,  
1828.

Citing the Next of Kin of the deceased to see the Will propounded, and other acts done, promoted by the Residuary Legatees named in the said Will.

### EXECUTORS *v.* EXECUTORS.

Masterman *v.*  
Maberley and  
others, June,  
1823.

Citing the Executors who had obtained Probate of the Will and two Codicils thereto, to bring in the said Probate and show cause why the same should not be revoked, and why Probate of the said Will and Codicils, together with certain Bonds, and an unexecuted Will should not be granted to the Executors therein named, as containing together the Will of the deceased.

Kelly *v.* Dunbar  
July, 1828.

### UNIVERSAL LEGATEE *v.* REPRESENTATIVE OF EXECUTRIX.

Citing the Representative of the Executrix of a Will of the deceased, and of which she had obtained Probate, to bring in the said Probate and show cause why the same should not be revoked, and Letters of Administration with another Will annexed should not be granted to the Universal Legatee therein named.

### EXECUTRIX *v.* NEXT OF KIN.

Wootten *v.*  
Wootten and  
Wootten,  
September, 1823.

Citing the next of kin of the deceased to see an incomplete paper propounded, and other acts done, promoted by the Executrix named in the same paper,

### PARTY IN DISTRIBUTION *v.* EXECUTOR.

Eldridge *v.*  
Guthwaite,  
September, 1828.

Citing the Executor of the Will of the deceased to bring in the Probate thereof, and prove the same in solemn form, promoted by a Party entitled in Distribution.

### EXECUTORS *v.* PARTIES INTERESTED IN RESIDUE.

Ravenscroft,  
*v.* Hunter,  
November, 1828.

Citing certain parties who were interested in the Residue of the deceased's Estate, and whose interests were affected by alterations made after the execution of the Will, to propound the said Will with such alterations, or show cause why Probate thereof should not be granted as it originally stood.

WIDOW *v.* ALLEGED CREDITOR.

Citing a party to whom Letters of Administration had been granted, under the suggestion of his being a Creditor of the Estate of the deceased, to bring in the said Letters of Administration, and show cause why the same should not be revoked, as having been unduly obtained, and why Letters of Administration should not be granted to the Widow of the said deceased.

*Pennan v. Anderson.*  
November, 1829.

PERSONS BENEFITED BY CODICIL *v.* EXECUTOR OF WILL.

Citing the Executors of the Will of the deceased, who had obtained Probate thereof, to accept Probate of a Codicil to the said Will, promoted by certain persons who were benefited by the said Codicil.

*Jones & Adkin v. Viall & Viall,*  
January, 1829.

RESIDUARY LEGATEE *v.* EXECUTORS.

Citing the Executors of the Will of the deceased to whom Probate of the said Will and two Codicils had been granted, to bring in the said Probate and show cause why the same should not be revoked and the second Codicil declared invalid, and why Probate of the said Will and first Codicil only should not be granted to them, promoted by the Residuary Legatee named in the said Will.

*Pearson v. Fieldson and others,*  
May, 1829.

EXECUTORS *v.* EXECUTOR.

Citing one of the Executors to bring in the Probate of the Will of the deceased, and show cause why the same should not be revoked, and why Probate of the said Will (without certain alterations made therein) should not be granted anew to the Executors named in the said Will.

*Harrison v. Stone,*  
May, 1829.

EXECUTORS *v.* LEGATEES UNDER CODICIL.

Citing the Legatees under a Codicil to propound the said Codicil or show cause why Probate of the Will alone should not be granted to the Executors therein named.

*Blackwell and Mahon v. Holland & Pnller,*  
June, 1829.

EXECUTOR *v.* EXECUTORS.

Citing two of the Executors of the Will of the deceased to bring in the Probate of the said Will and show cause why the same should not be revoked, and why Probate of the said Will, together with two unexecuted papers as forming part thereof, should not be granted to the Executors named in the said Will, promoted by the other Executor.

*Dickson v. Brenton and Ryley,*  
June, 1829.

EXECUTOR *v.* LEGATEE UNDER SECOND CODICIL.

Citing the Legatee under the second Codicil to the Will of the deceased to propound the said Codicil or to show cause why Probate of the Will and one Codicil should not be granted to the Executor therein named.

*Headington v. Holloway,*  
July, 1829.

NOMINEE TO ASSIGN A TERM *v.* EXECUTRIX.

Maslin and  
Hagem,  
July, 1829.

Citing the Executrix of the Will of the deceased to bring in the said Will and accept Probate thereof, or to show cause why Letters of Administration of the unadministered goods of a certain person (whose Representative she would have become by proving the said Will) limited to assign a term of years, should not be granted to a Nominee.

UNIVERSAL LEGATEES *v.* BANKRUPT NEXT OF KIN.

Knight and  
Knight *v.*  
Knight and  
West,  
November, 1829.

Citing one of the next of kin (a Bankrupt) and his Assignee to see the Will of the deceased propounded, and other acts done, promoted by the Universal Legatees named in the said Will.

PARTY AFFECTED BY CODICIL *v.* EXECUTORS.

Pattenden by  
her Guardian *v.*  
Baker & Baker,  
November, 1829.

Citing the Executors named in the Will of the deceased to show cause why Probate of the said Will, together with an unexecuted paper purporting to be a Codicil thereto, should not be granted to them, promoted by a Party whose interest was affected by the said Codicil.

## CITATIONS FOR INVENTORY AND ACCOUNT WHICH ISSUED FROM THE PREROGATIVE COURT.

CREDITOR *v.* ADMINISTRATRIX.

Roberts *v.*  
Cooper,  
January, 1827.

Citing the Administratrix of the goods of the deceased to exhibit an Inventory and an Account promoted by a Creditor.

RESIDUARY LEGATEE *v.* EXECUTORS.

Francis *v.* Floss  
and Field,  
February, 1827.

Citing the Executors of the Will of the deceased to exhibit an Inventory, and an Account promoted by the Residuary Legatee named in the said Will.

RESIDUARY LEGATEES *v.* RESIDUARY LEGATEE.

Snuggs and  
others *v.*  
Attneary,  
February, 1827.

Citing one of the Residuary Legatees named in the Will of the deceased who had obtained Letters of Administration with the said Will annexed to exhibit an Inventory and an Account, promoted by four other of the Residuary Legatees therein named.

RESIDUARY LEGATEES *v.* EXECUTORS.

Headden *v.*  
Emmett and  
Heale,  
February, 1827.

Citing the Executors of the Will of the deceased to exhibit an Inventory and an Account, promoted by one of the Residuary Legatees named in the said Will.

ASSIGNEE OF SON (A BANKRUPT) *v.* ADMINISTRATRIX.

Citing the Widow and Administratrix of the goods of the deceased to exhibit an Inventory and an Account, to see portions allotted and distribution made, promoted by the Assignee of the Son of the deceased (a bankrupt). *Pitt v. Woodham, February, 1827.*

CREDITOR *v.* EXECUTOR.

Citing the Executor of the Will of the deceased to exhibit an Inventory and an Account, promoted by a Creditor. *Davies v. Allen, March, 1827.*

UNIVERSAL LEGATEE FOR LIFE *v.* EXECUTOR.

Citing the Executor of the Will of the deceased to exhibit an Inventory and an Account, promoted by the Universal Legatee for life therein named. *Guise v. Bowen, May, 1827.*

NEXT OF KIN *v.* ADMINISTRATOR.

Citing the Administrators of the goods of the deceased to exhibit an Inventory and an Account to see portions allotted and distribution made, promoted by one of the next of kin of the deceased. *Battle v. Davison, May, 1827.*

CHILD *v.* CHILDREN.

Citing two of the Children, the Administrators of the goods of the deceased, to exhibit an Inventory and an Account, to see portions allotted and distribution made, promoted by one other of the Children of the deceased. *Osler v. Read and Read, May, 1827.*

CREDITOR *v.* EXECUTORS.

Citing one of the Executors of the Will of the deceased to exhibit an Inventory and an Account, promoted by a Creditor. *Bradshaw v. Ellerthorpe, May, 1827.*

RESIDUARY LEGATEE *v.* EXECUTOR.

Citing the Executor of the Will of the deceased to exhibit an Inventory and an Account, promoted by the Residuary Legatee named in the said Will. *Crouch v. Lance, July, 1827.*

FATHER OF DECEASED *v.* WIDOW AND ADMINISTRATRIX.

Citing the Widow and Administratrix of the goods of the deceased to exhibit an Inventory and an Account, promoted by the Father of the deceased. *Collard v. Collard, July, 1827.*

HIS MAJESTY'S PROCTOR *v.* ADMINISTRATOR.

Citing the Administrator of the goods of the deceased, who died without any relation, to exhibit an Inventory and an Account, promoted by his Majesty's Procurator-General. *Itid Nicholl, His Majesty's Procurator-General v. Forster, January, 1828.*

PARTY IN DISTRIBUTION *v.* ADMINISTRATRIX.

*Smith v. Palmer*,  
January, 1828. Citing the Administratrix to exhibit an Inventory and an Account, to see portions allotted and distribution made, promoted by a Party entitled in distribution.

CREDITOR *v.* ADMINISTRATOR.

*Graham v. Say*,  
February, 1828. Citing the next of kin, the Administrator of the goods of the deceased, to exhibit an Inventory and an Account, promoted by a Creditor.

REPRESENTATIVE OF CREDITOR *v.* RESIDUARY LEGATEE.

*West v. Swain*,  
February, 1828. Citing the Residuary Legatee to whom Letters of Administration with Will annexed had been granted to exhibit an Inventory and an Account, promoted by the Representative of a Creditor.

REPRESENTATIVE OF CREDITOR *v.* EXECUTORS.

*Lamb and Shakespeare v. Viliert*,  
April, 1828. Citing the Executors of the Will of the deceased to exhibit an Inventory and an Account, promoted by the Representatives of a Creditor.

RESIDUARY LEGATEE *v.* EXECUTOR.

*Tuck and Tuck v. Eames*,  
November, 1828. Citing the Executors of the Will of the deceased to bring in an Inventory and an Account, promoted by the Residuary Legatee named in the said Will.

PERSONS IN DISTRIBUTION *v.* ADMINISTRATRIX.

*Bradley and others v. Bradley*,  
January, 1829. Citing the Widow, the Administratrix of the goods of the deceased, to exhibit an Inventory and an Account, promoted by three of the persons entitled in distribution.

PARTY IN DISTRIBUTION *v.* ADMINISTRATOR.

*Gair, by his Guardian v. Forster*,  
February, 1829. Citing the Administrator of the unadministered goods of the deceased to exhibit an Inventory and an Account, promoted by one of the Parties entitled in distribution.

PARTY ENTITLED TO UNDISPOSED OF RESIDUE *v.* EXECUTORS.

*Tiffin v. Mitchell and Beckett*,  
February, 1829. Citing the Executors of the Will of the deceased to exhibit an Inventory and an Account, promoted by a Party entitled to the undisposed of residue of the deceased's estate.

RESIDUARY LEGATEE *v.* EXECUTOR.

*Carter v. Carter*,  
June 1829. Citing the Executor of the Will of the deceased to exhibit an Inventory, promoted by the Representative of the Residuary Legatee named in the said Will.

# REPRESENTATIVE OF ONE OF UNIVERSAL LEGATEES *v.* EXECUTORS.

Citing the Executors of the Will of the deceased to exhibit an Inventory and an Account, promoted by the Representative of one of the Universal Legatees therein named.

Le Cointe *v.*  
De la Cour,  
1829.

# HIS MAJESTY'S PROCTOR *v.* REPRESENTATIVE OF EXECUTOR.

Citing the Representative of the Executor of the Will of the deceased to exhibit an Inventory and an Account, promoted by his Majesty's Procurator-General for the benefit of His Majesty, who (there being no relations) was entitled to the residue of the deceased's estate not disposed of by her Will.

Itid Nichol  
His Majesty's  
Procurator-  
General. *v.*  
Charnock.  
August, 1829.

# COMMISSION FOR EXAMINATION OF WITNESSES.

38

## IN HER MAJESTY'S COURT OF PROBATE.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To our Attorney-General for the Cape of Good Hope.

Whereas there is now depending in our said Court of Probate a certain Cause of H            and G            against A           , wherein W            H            and W            G            are Plaintiffs, and J            A            is Defendant. And whereas the Right Honorable Sir           , Knight, the Judge of our said Court, by his Order made in this Cause on the            day of           , One thousand eight hundred and sixty           , hath, on the application of the Defendant, ordered that a Commission do issue under the Seal of our said Court directing him to examine W            G            A           , and others resident at the said Cape of Good Hope aforesaid, to be produced on the part of the said Defendant as also on the part of the Plaintiffs. Now know ye that we do, by virtue of this Commission to you directed, authorize you within seven days after the receipt of this Commission, at a certain time and place to be by you appointed for that purpose, with reasonable notice of the same to both parties, and with power of adjournment to such other time and place, with the like notice as to you shall seem convenient to cause the said Witnesses to come before you, and to administer to the said Witnesses respectively an Oath, truly to answer such questions as shall be put to them by you, or with your authority by the parties respectively, by way of examination in chief or cross-examination, touching the matters set forth in the Pleadings in the said Cause: a true and authentic copy whereof, sealed with the Seal of our said Court, is hereunto annexed, and such Oath being administered we do hereby authorize you to take the said Examination of the said Witnesses touching the matters set forth in the said Pleadings in the manner above stated, and to reduce the said Exami-

nation, or cause the same to be reduced into writing, and that for the purpose aforesaid you do assume to yourself some Notary Public or other lawful Scribe, as and for your Actuary in that behalf, if to you it should seem meet and convenient so to do. And the said Examination being so taken and reduced into writing as aforesaid and subscribed by you, we do require you forthwith to transmit the said Examination closely sealed up to the Principal Registry of our said Court in Doctors' Commons, in the City of London, together with these presents. And we do hereby give you full power and authority to do all such acts, matters, and things as may be necessary, lawful, and expedient for the due execution of this our Commission.

Dated at London the            day of           , in the year of our Lord One thousand eight hundred and sixty           , and in the year of our Reign.

(Signed)            A            B           , Registrar.

See Oaths, page  
215.

C            D            & Co.,  
Solicitors,  
                Street,  
London.

L. S.

### 39

## COMMISSION WITH DIRECTIONS TO EMPLOY AN INTERPRETER.

### IN HER MAJESTY'S COURT OF PROBATE.

Commission  
with directions  
to employ an  
Interpreter.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith. To J            W            D           , Esquire, Advocate-General at Jersey, and J            G           , Esquire, Advocate of the Royal Court of Jersey.

Greeting—Whereas there is now depending in our said Court of Probate a certain cause of proving in solemn form of Law, by sufficient witnesses, the last Will and Testament of I            C           , formerly of Jersey, but late of           , in the County of           , Gentleman, deceased, purporting to bear date the            day of           , One thousand eight hundred and           , wherein J            R            is Plaintiff, and W            H            and J            H            B            are Defendants. And whereas the Right Honorable Sir           , Knight, the Judge of our said Court, by his Order made in the said Cause on the            day of           , One thousand eight hundred and           , hath ordered that a Commission do issue under the seal of our said Court directing you to examine *vidæ voce* R            D            B           , of the Island of Jersey, Esquire, and S           , his Wife, M            L            J           , of Jersey aforesaid, Spinster, and others resident in the Islands of Jersey and Guernsey, to be produced on the part of the said Defendants as Witnesses in the said Cause. Now know ye that we do by virtue of this Com-



mission to you directed, authorize you within seven days after the receipt of this Commission, at a certain time and place to be by you appointed for that purpose, with power of adjournment to such other place or places as to you shall seem convenient in the Island of Jersey, to cause the said Witnesses to come before you, and to administer to the said Witnesses respectively an oath truly to answer such questions as shall be put to them touching the matters set forth in the pleadings in the said Cause—a true and authentic copy whereof, sealed with the seal of our said Court is hereunto annexed, and to reduce the said examination or cause the same to be reduced into writing. And we further command and authorize you, if you deem it expedient to employ an Interpreter who shall, before he be permitted to act as an Interpreter, take an oath truly and faithfully, and to the best of his skill and understanding, to interpret any matter or thing which you may deem expedient for the purpose of this Commission. And the said Examination being taken, reduced into writing and subscribed by you, we do request you or one of you forthwith to transmit the same closely sealed up to the Principal Registry of our said Court in Doctors' Commons, in the City of London, together with this Commission. And we do hereby give you full power and authority to do all such acts, matters, and things as may be necessary and lawful for the due execution of this Commission.

Dated at London the            day of            , in the            year of  
our Lord One thousand eight hundred and            , and in the  
year of our Reign.

Commission to examine Witnesses }  
*viva voce* on the part of the De- }  
fendant.

See Oaths,  
page 215.

J            L            ,  
Solicitor,  
Temple.

## COMMISSION AND TO EXAMINE ON INTERROGATORIES. 40

VICTORIA by the Grace of God of the United Kingdom of Commission,  
Great Britain and Ireland Queen, Defender of the Faith. To authorize the  
The Honorable A            S            , The Honorable W            S            , The  
Honorable S            A            , and The Honorable W            M            , all  
of Auckland in New Zealand.

Whereas there is now depending in our Court of Probate, This Commission does not  
before the Right Honorable Sir            , Knight, the Judge of authorize the  
our said Court, a certain cause wherein J            L            is Plaintiff taking the  
P Evidence by  
an Interpreter.

and T G Defendant ; and it hath been ruled and ordered by our said Court that this Writ shall be issued commanding you, or any one or more of you, to examine Mr. A B , now at Auckland in New Zealand aforesaid on the part of the said Defendant in the said cause, and to administer any interrogatories to such witness as may be forwarded to you herewith, as well on the part of the said Plaintiff as on the part of the said Defendant, pursuant to the Statutes of 20 and 21 Vic. c. 77, and 13 Geo. III. c. 63, and 1 William IV. c. 22, and to perform all matters and things as by the said Statutes are required, and that this Writ and depositions taken in manner aforesaid be transmitted under your seal, or the seal or seals of such one or more of you as shall act in the execution hereof, to the Registrars of the Principal Registry of our said Court of Probate, and be permitted to be read and given in evidence on the trial of the said cause saving all just exceptions. Now know ye that we command you, or any one or more of you, that you do with all due diligence examine and cross-examine on his corporal oath, which oath any one or more of you is or are hereby empowered to administer to the said Witness *vivâ voce*, and also administer to the said Witness any interrogatories and cross-interrogatories which may be sent to you herewith, and receive such other proofs as may be offered to you, either on the part of the said Defendant or on the part of the said Plaintiff, pursuant to the said Statutes, and perform all such other matters and things as by the said Statutes are required, and we hereby give you full power and authority so to do, and that you do take such examinations and depositions and reduce them to writing on paper or parchment, and forthwith transmit the same, together with this Writ under your seal or seals as aforesaid, to the Registrar of the Principal Registry of our said Court of Probate.

See Oaths,  
page 215.

Witness, the Right Honorable Sir , Knight, at Westminster, the day of , One thousand eight hundred and , and in the year of our Reign.

# 41 CONSENT OF THE OTHER NEXT OF KIN TO A GRANT BEING MADE JOINTLY TO RELICT AND ONE NEXT OF KIN.

IN HER MAJESTY'S COURT OF PROBATE.

Consent of the  
other next of  
kin to a Grant  
being made  
jointly to Relict  
and one next of  
kin.

The Principal Registry.

Whereas A B , late of , deceased, died on the day of , 18 , at , intestate, leaving C D , Widow, his lawful relict, and E F , G H , and I K his natural and lawful and only children. And

whereas the said C D is consenting and desirous that the Letters of Administration of all and singular the personal estate and effects of the said deceased be committed and granted to her jointly with the said E F .

Now we, the said G H , of , and I K , of , do hereby severally declare that we expressly consent that Letters of Administration of all and singular the personal estate and effects of the said deceased be committed and granted to the said C D , Widow, and E F , jointly. And we do hereby appoint our Proctor (Solicitor or Attorney) to file or cause to be filed this consent for us in the said Principal Registry of Her Majesty's Court of Probate.

In witness whereof we have hereunto set our hands and seals this day of , 18 .

Signed, sealed, and delivered		}	G	H	.	L. S.
by the said G H and			I	K	.	L. S.
I K in the presence of						
X Y ,						
Witness.						

## ELECTION BY MINORS OF A GUARDIAN.

42

### IN HER MAJESTY'S COURT OF PROBATE.

#### The Principal Registry.

In the goods of A B , deceased.

Whereas A B , late of , in the County of , deceased, died on or about the day of , 18 , at , intestate, a Widower, leaving C D , E F , and G H his natural and lawful and only children ; the said C D being a minor of the age of twenty years only, the said E F being also a minor of the age of nineteen years only, and the said G H being an infant of the age of six years only.

Now we, the said C D and E F , do hereby make choice of, and elect K L our lawful *maternal* uncle (or as the case may be), and one of our next of kin, to be our Curator or Guardian for the purpose of his obtaining Letters of Administration of the personal estate and effects of the said A B , deceased, to be granted to him, for our use and benefit, and until one of us shall attain the age of twenty-one years (or for the purpose of renouncing for us and on our behalf, all our right, title, and interest to and in the Letters of Administration, &c., as the case may be) (add in cases where a Proctor, Solicitor, or Attorney appears for the Minors); and we hereby appoint M N , of , our Proctor, Solicitor, or Attorney to

Election by  
Minors of a  
Guardian.

file or cause to be filed this our election for us in the Principal Registry of Her Majesty's Court of Probate.

In witness whereof we have hereunto set our hands and seals this      day of      , in the year      .

Signed, sealed, and delivered	}				
by the within-named C      D					
and E      F      in the presence		C      D      .      L. S.			
of		E      F      .      L. S.			
X      Y      ,					
Witness.					

*(One disinterested witness sufficient.)*

## 43

### ELECTION OF GUARDIAN TO RENOUNCE.

#### IN HER MAJESTY'S COURT OF PROBATE.

Election of  
Guardian to  
Renounce.

#### The Principal Registry.

Whereas A      B      , late of      . in the County of      , deceased, died on the      day of      , 18      , at      , intestate, a Widower, leaving C      D      , E      F      , and G      H      , his natural and lawful and only children and only next of kin ; the said C      D      being a minor of the age of twenty years only, the said E      F      being also a minor of the age of nineteen years only, and the said G      H      being an infant of the age of six years only.

Now we, the said C      D      , of      , and E      F      , of      , do hereby make choice of, and elect K      L      , of      , in the County of      , our lawful maternal Uncle, and one of our next of kin, to be our Curator or Guardian for the purpose of renouncing for us and on our behalf all our right, title, and interest to and in the Letters of Administration of the personal estate and effects of the said A      B      , deceased ; and we hereby appoint M      N      , of      , our Proctor (Solicitor or Attorney) to file or cause to be filed this our Election for us in the said Principal Registry of Her Majesty's Court of Probate.

In witness whereof we have hereunto set our hands and seals this      day of      , in the year 18      .

Signed, sealed and delivered	}				
by the said C      D      and					
E      F      in the presence of		C      D      .      L. S.			
X      Y      ,		E      F      .      L. S.			
Witness.					

*(One disinterested witness sufficient.)*

## INVENTORY.

44

A true, full, and particular Inventory of all and singular the personal estate and effects of A B, late of , Inventory. deceased, which have at any time since his death come to the hands, possession, or knowledge of C D, the sole executor named in the last Will and Testament of the said A B (or administrator of the said personal estate and effects, as the case may be), made and exhibited upon and by virtue of the corporal oath (or solemn affirmation) of the said C D, follows, to wit:

First, this exhibitant saith, that the said deceased was at the time of his death possessed of.....

£	s.	d.

[The details of the deceased's effects must be here inserted in as many sheets of paper as may be necessary, and the value inserted opposite to each particular.]

Lastly, this exhibitant saith, that no personal estate or effects of or belonging to the said deceased have at any time since his death come to the hands, possession, or knowledge of this exhibitant, save as herein set forth.

(Signed) C D.

On the day of , 18 , the said C D was duly sworn to (or solemnly, sincerely, and truly declared and affirmed, according to the form of words prescribed by the Statute applicable to the particular case), the truth of the above Inventory, at

Before me,

[Person authorized to administer Oaths under the Act.]

## MOTION, STATEMENT OR CASE.

45

## PROBATE COURT—CASE FOR MOTION.

In the goods of M A S, Spinster, deceased. Motion case.  
M A S, the Testatrix, was formerly of , in the County of , and late of in the same County, Spinster, deceased, and died on the day of , 18 , having made and duly executed her last Will and Testament in writing, bearing date the day of , 18 , and thereof appointed P R D and T W Executors and Residuary Legatees.

There are several interlineations in the Will all in the handwriting of the Testatrix, but no evidence can be obtained as to the time when such interlineations were made.

On the day the Will bears date the Testatrix took the Will

into the office of Mr. C M , one of the attesting Witnesses, and requested him and his Clerk, Mr. C (the only person then present) to witness the execution thereof. The Will was at that time so folded as to prevent the attesting Witnesses from seeing more of the contents of the said Will than the last two lines thereof, and no mention was made to them by the Testatrix of any interlineation therein.

As respects the sheet of paper having a portion torn off from the bottom of the same, it is in the same state now as when executed by the Testatrix.

\* This means that Copies are left with Counsel, the Originals being left in the Registry.

\* Copies of the Affidavits of the attesting Witnesses and Copy of the Will are left herewith, and—

Counsel will be pleased to move the Court to decree Probate of the said Will as the same now appears, to wit, with the interlineations now appearing therein to be granted to the said Executors.

## MOTION, STATEMENT OR CASE.

### PROBATE COURT—CASE FOR MOTION.

46

Motion case.

In the goods of T S , deceased.

T S , who was formerly resident in , in the County of , proceeded in the year 1842 to Australia.

It appears from the Affidavits of Mr. W C Y and Mr. J H that they were at Melbourne in Australia in the year 1852, and were acquainted with the said T S , who informed them that he was about to proceed to Sydney in a vessel called the "Favorite."

Mr. Y states that he saw him about half-an-hour before he went on board the said ship, and that the said ship with all on board was lost on her said voyage. Mr. H had an interview with him on board the said ship the day before she sailed, and also saw him on board when under sail, he (Mr. H ) being then in his own boat, and he believes this was on of 185 .

Mr. H further says that the said ship has never been heard of since leaving Melbourne ; that he had several friends on board besides the said T S , and that he has never received the least intelligence respecting any of them, and he has no doubt whatever that they were all lost, and that Insurances effected on goods shipped in the said vessel have been paid by the Underwriters.

The deceased was a Bachelor and left an only Sister, Mrs. A C , surviving. Mrs. C and her husband were in the

frequent habit of corresponding with him, and received from him newspapers by nearly every mail.

He was the Nephew and one of the persons entitled in distribution to the personal estate of T G, late of, deceased. Mr. C wrote to the deceased on the of, 185, informing him of the death of the said T G and requesting him to return to England or to forward a power of Attorney, authorizing Mr. C to receive his share of the said estate.

No answer has been received to this letter.

Both Mr. and Mrs. C have written several times since, but no letter or communication whatever has been received from the said T S since, 1852.

Mrs. C has been in the habit of corresponding with a friend, Mrs. E J, residing at Adelaide, who was intimate with and related to the said T S. Mrs. J, in a letter dated the 23rd of August, 1852, informs Mrs. C that her Brother, the said T S, had sailed from Melbourne for Sydney on the 9th May, 1852, on board the ship "Favorite," which ship was last seen in a fearful gale on the 17th of May and had not since been heard of, although the Government had sent H. M. Ship "Acheron" on a coasting voyage in search of the said ship "Favorite." And in a further letter dated the 10th of June, 1853, the said E J writes—"it is quite certain that he (meaning the said T S) sailed from Melbourne on the 9th of May, 1852, and that the last time the vessel was seen was in a gale on the 17th."

The letters are annexed to the Affidavit. Mr. P, the Chief Clerk of Lloyd's Secretary Office, states in an Affidavit that it appears from their Register of Ships that a vessel called the "Favorite" sailed from Melbourne on the 9th May, 1852, and has not since been heard of.

The usual Advertisements have been inserted in two papers, and in the *Times*, but nothing has resulted.

Copies of the Affidavits are left herewith. (a)

Counsel will move the Court to decree Letters of Administration of the goods of the deceased, as dying on or since the Seventeenth day of May, 1852, to be granted to Mrs. C, the Sister.

(a) This means that Copies are left with Counsel, the Originals being left in the Registry.

## OATHS BY COMMISSIONERS, WITNESSES, &c.

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You shall, according to the best of your skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this Cause, take the Examination and depositions

Commissioner's Oath.

of all and every the Witness and Witnesses produced and examined by virtue of the Commission within written,

So help you God.

Witnesses' Oath.

You are true answers to make to all such Questions as shall be asked you, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth,

So help you God.

Clerk's Oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this Cause, take and write down, transcribe, and engross the depositions of all and every the Witness and Witnesses produced before or examined by the Commissioners, or any of them named in the Commission within written, so far as you are directed and employed by the said Commissioners, or any of them, to take down, write, and engross the said Depositions,

So help you God.

Interpreter's Oath.

You shall, according to the best of your skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this Cause, interpret the several Interrogatories, and *vivâ voce* Questions put to, and the several Answers and Depositions of all and every the Witness and Witnesses produced and examined by virtue of the Commission within written,

So help you God.

*These Oaths are endorsed on the Commission.*

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### ORDERS ON SUMMONS.

#### APPEARANCE BY HUSBAND.

Smith v. Aldon,  
January, 1860.

Upon hearing the Agents on both sides the Judge ordered that an Appearance be entered within a week for F S , the husband of the above-named Plaintiff, S S , as Co-plaintiff in this Cause.

#### APPEARANCE AMENDED.

Simpson v.  
Fisher, April,  
1869.

Upon hearing the Agents on both sides the Judge ordered that the Defendant do amend his appearance by correctly setting forth his relationship to the deceased, or propound his interest as a Brother of the deceased, and pay the costs occasioned by his not correctly stating his interest, or the contentious proceedings to be discontinued with costs against the Defendant in a week from the service of this Order.



## APPEARANCE BY GUARDIAN TO BE ELECTED.

Upon hearing the Agents on both sides the Judge ordered that the Plaintiff's Proctor appear for his Party by a Guardian to be duly elected by her, she being a Minor. *Smith v. Kirby, Juns, 1868.*

## APPEARANCE BY GUARDIAN—LEAVE TO APPEAR.

The Judge ordered that C A C be at liberty to appear in this Suit as the Guardian, lawfully assigned to M M Willdriggs and Ryland v. Willdriggs, August, 1868.  
W , one of the above-named Plaintiffs.

## APPEARANCE BY HEIR-AT-LAW.

The Judge ordered that W L , one of the Defendants in this Suit, do appear herein as Heir-at-Law of the deceased, he having already appeared as one of the next of kin. *Jones v. Lewis and others, April, 1868.*

## AFFIDAVIT OF SCRIPTS—TIME EXPIRED.

The Judge ordered that the Plaintiffs be allowed to file their Affidavit of Scripts, notwithstanding the time for so doing has expired, and the Cause being set down for hearing. *Eckersley v. Platt, Oct. 1866.*

## FURTHER AFFIDAVIT OF SCRIPTS IN CONSEQUENCE OF AN ERROR.

The Judge ordered that the Plaintiff be allowed to file a further Affidavit of Scripts, setting out the date of the original Will of the deceased in the Cause as the 30th day of August, 1865, instead of 13th day of August, 1865, as in the Affidavit. *Veevers v. Veevers, May, 1868.*

## FURTHER AND FULLER AFFIDAVIT OF SCRIPTS.

The Judge ordered that the Plaintiff be at liberty to file a further and fuller Affidavit of Scripts. *Roebuck v. Roebuck, January, 1868.*

## AFFIDAVIT OF SCRIPTS WAIVED.

The Judge ordered that the usual Affidavit as to Scripts by the Plaintiff, M F by her Committee, the said Plaintiffs A T and W T be waived. *Taylor & Fraser v. Yardley and others. 1867.*

The Judge ordered that the Affidavit of the said R H be waived, he being resident in Australia. *Howarth and another v. Howarth & others. November, 1863.*

## ADMINISTRATOR PENDENTE LITE TO FILE HIS ACCOUNTS.

The Judge ordered that J R the Administrator pendente lite of J P deceased, do, before the 5th day of May next, file his Accounts as Administrator pendente lite in the Principal Registry of this Court. *Langmead v. Ponsford. April, 1868.*

# ADMINISTRATOR'S ACCOUNTS REFERRED TO REGISTRAR.

Kilbee v.  
Fowler. Decem-  
ber, 1863.

The Judge ordered that it be referred to one of the Registrars of this Court to ascertain and report to the Court whether the account of the Administrator of the personal estate of G E F the deceased in this Cause, filed by the Defendant in obedience to the Citation served upon him, is a sufficient account or in what respect the same requires amendment.

## CAVEAT, GRANT TO ISSUE NOTWITHSTANDING.

Young v Dendy.  
February, 1867.

The Judge ordered that the Probate of the Will of A. A. J. D , dated the day of 1859, do pass the Seal of this Court, and do issue, notwithstanding any Caveat that may be entered to prevent the same.

## CAVEATS, GRANT TO ISSUE NOTWITHSTANDING.

Re Elizabeth  
Jones, deceased.  
April, 1867.

The Judge ordered that Probate of the Will of E J late of be granted and do issue to G T the Executor of such Will, notwithstanding the several Caveats entered by R R T B and that the said R R T B do pay the sum of £2 2s. for Costs to the said G T

## CAVEAT, LEAVE TO SUBDUCE.

Peppercorn v.  
Peppercorn.  
March, 1862.

The Judge ordered that the Caveat entered by U J and U against the Grant of Probate of the Will of J W P deceased may be subducted, notwithstanding Warning has been issued and duly served.

## CONTRADICTOR ADMITTED.

Jarvis v.  
Thompson and  
Loose. January,  
1865.

The Judge ordered that the Suit in objection to M A T 's interest be stayed, and that the said M A T be admitted by consent a Contradictor to the Will (the questions of fact in the Interest Suit being reserved till after hearing) the costs of this order to be costs in the cause.

## CONSOLIDATING CAUSES.

Foster v. Scott.  
May, 1864.

The Judge ordered that this Suit be Consolidated with the Suit brought by the Plaintiff against G E D P and be carried on as F v. S and P .

## COMMISSION TO ISSUE.

Bawsher v.  
Williams and  
others. June,  
1860.

The Judge ordered that a Commission do issue directed to the British Consul, at Ostend, for the purpose of taking Evidence of certain Witnesses residing in Belgium, and that the Plaintiff may join in such Commission.

## COMMISSION, RETURN ENLARGED.

The Judge ordered that the return of the Requisition or Commission issued under the Seal of this Court, and dated \_\_\_\_\_, and also the return of the Supplemental Commission also issued under Seal of this Court, and dated \_\_\_\_\_, be respectively enlarged to \_\_\_\_\_.

Archer v. Burke.  
September, 1866.

## CHANGE PRACTITIONER.

The Judge ordered that Mr. A \_\_\_\_\_ be appointed Solicitor for the Defendant in this Cause, in the place and stead of Mr. B \_\_\_\_\_, on payment of his Costs, and that the Costs be taxed by one of the Registrars of Her Majesty's Court of Probate, and that the said Mr. B \_\_\_\_\_ do file his Bill of Costs for Taxation within a week from the service of this Order.

Coles v. Coles.  
November, 1866.

## COMPROMISE PROPOSED—TIME TO COMPLETE.

The Judge ordered the Trial of this Cause shall be further postponed until the 15th February next, in order to give time to complete a proposed compromise.

Gibbs & Pyle v.  
Boreham Janu-  
ary, 1866.

## CONTENTIOUS PROCEEDINGS DISCONTINUED.

The Judge ordered that the Contentious Proceedings herein be discontinued.

Morgan v.  
Jones. Novem-  
ber, 1866.

The Judge ordered that the Proceedings herein be discontinued, and the Plaintiff to pay the Defendant 30s. Costs herein.

Clegg v. Leach.  
November 1866.

Upon hearing the Agents on both sides, the Judge ordered that the Proceedings be discontinued herein, and condemned the Defendant in the Plaintiff's Costs in this Suit.

John v. Jones.  
November, 1866.

The Judge ordered that the Contentious Proceedings herein be discontinued, and the Costs of and arising out of the Plea of undue Influence to be paid by the Defendants to the Plaintiff.

Lodge v.  
Mathias and  
others Novem-  
ber, 1866.

The Judge ordered that the Contentious Proceedings herein be discontinued, and that the Probate of the Will of G H \_\_\_\_\_, deceased, now remaining in the Principal Registry, be delivered out to the Defendant's Solicitors, Messrs. \_\_\_\_\_ for his use.

Holden v.  
Crowther. No-  
vember, 1866.

## CONTENTIOUS PROCEEDINGS DISCONTINUED FOR WANT OF INTEREST.

On reading the Affidavit of J \_\_\_\_\_ S \_\_\_\_\_ D \_\_\_\_\_ and W \_\_\_\_\_ J \_\_\_\_\_ W \_\_\_\_\_, sworn the \_\_\_\_\_ of \_\_\_\_\_ 186 \_\_\_\_\_, the Judge ordered that the Contentious Proceedings in this Suit be discontinued, on the ground that the Defendant has no interest, and that the said Defendant pay the Costs of and occasioned by him, and the Costs of and consequent on this Order.

Jones and  
Williams v.  
Williams. June,  
1866.

## COSTS BY AGREEMENT.

Evans & Evans  
v. Evans.  
March, 1865.

The Judge ordered that the Contentious Proceedings herein be discontinued, and that the Costs thereof be borne and paid by the parties, in the proportions and in the manner stated in the Agreement entered into by them.

## COSTS—REGISTRAR TO ASCERTAIN ESTATE APPLICABLE FOR COSTS.

Filmer v. Chard.  
April, 1867.

The Judge ordered that it be referred to one of the Registrars of this Court to ascertain if there is any, and what estate, applicable to the payment of Costs, and to report thereon to him.

## COSTS—BILL TO BE DELIVERED.

In the Goods of  
Sophia Guthrie,  
deceased.  
January, 1867.

The Judge ordered that Messrs. S and W deliver to C S G, the Executor in this matter, their Bill of Costs, for preparing papers for obtaining Probate in this matter.

## COSTS—ORDER TO PAY.

Moye v. Diver  
and Waters.  
May, 1866.

Upon hearing the Agents, on both sides, the Judge ordered that the Plaintiff, J M, within a week from the service of this Order, pay to the Defendant O D and J D W the sum of £ : : , the amount of taxed Costs herein.

Vardon and  
another v. Ford.  
January, 1867.

The Judge ordered that the Defendant, J F, within a week from the service of this Order, pay to the Plaintiffs the sum of £ , the taxed Costs of this Suit, and the sum of £ , the Costs of and incidental to this Order.

## COSTS—IN CAUSE.

Mudford v.  
Mudford. May,  
1866.

The Judge ordered that the Costs of an Application on Summons, for the particulars of the alleged fraud, be Costs in the Cause, and certified for the attendance of Counsel herein.

## COSTS—SECURITY FOR.

Douglas v.  
Darley & others.  
January, 1865.

The Judge ordered that the Plaintiff do give security for Costs in this Cause, and that, meantime, all further proceedings be stayed.

Kelly v. Lupton  
and Kelly. No-  
vember, 1866.

The Judge ordered that it be referred to the Registrar to fix the amount of security for Costs to be given by the Defendant, he being resident out of the Jurisdiction of this Court.

## COUNTY COURT, PROCEEDINGS DISCONTINUED.

Pullan v.  
Pullan. April,  
1864.

The Judge ordered that the Contentious Proceedings in this Suit be discontinued, notwithstanding the Order referring the further proceedings to the County Court.

## DISCOVERY OF PAPERS.

The Judge ordered that the Summons dated the            day of            Horrell v. Witt  
last for the discovery of Papers, Books, Letters, &c., be            and Plumley.  
dismissed with Costs against the Defendant J            W            February, 1866.  
and certified for the attendance of Counsel to oppose the said  
Summons.

## DECLARATION, TIME ELAPSED.

On reading the Joint and several Affidavits of E            P            Chapman and  
and C            E            sworn the            day of            the Judge            Wife v. Toulmin.  
ordered that the Defendant be at liberty to declare in this Cause,            May, 1866.  
notwithstanding the time to declare has elapsed.

## DECLARATION AMENDED.

The Judge ordered that the Plaintiff be allowed to amend her            Davies v.  
Declaration in this Cause by altering the date of the death of            Deveraux and  
the deceased in this Cause therein mentioned from the first to            Roberts. March,  
the second day of June, 1863.            1868.

## DECLARATION AND PLEAS AMENDED.

The Judge ordered that the Declaration herein be amended by            Hill and Chad-  
propounding a copy of the Codicil to the Will of the deceased,            wick v Hughes  
and that the Defendants be forthwith at liberty to amend their            and another.  
pleas accordingly.            May, 1866.

## DECLARATION, PROCEEDINGS STAYED.

The Judge ordered that the proceedings upon the Declaration            James and  
filed by the Plaintiff be stayed, pending the proceedings upon            Hoskins v.  
the Declaration filed by the Defendant.            Foster. Novem-  
ber, 1866.

## DEMURRER, ISSUE JOINED.

The Judge ordered that the Defendant do within four days            Wells v. Wells.  
from the service of this Order join issue with the Plaintiff on            February, 1862.  
the Demurrer to the Defendant's third Plea.

## DEMURRER WITHDRAWN.

The Judge ordered that the Plaintiffs withdraw this De-            Sharpe and  
murrer, on payment of Costs, and the Defendant be at liberty            Sharpe v.  
to file a fresh Declaration.            Crispin. June,  
1863.

## FURTHER TIME TO OBJECT, DEMUR, OR REPLY.

The Judge ordered that the Defendant have a fortnight's            Crispin v.  
further time to object, demur, or reply to the Pleas of the            Cumano. Feb-  
Plaintiff filed in this Cause, as Counsel may advise.            ruary, 1867.

## DISMISSING PARTY.

The Judge ordered that J            L            H            be dismissed from            Bone & Homer-  
this Suit, but reserved the question of Costs.            sham v. Hale.  
January, 1866.

## DISCHARGING ORDER.

Irlam and  
another v.  
Robinson. Feb-  
ruary, 1865.

The Judge discharged the Order that the questions of fact arising out of the Pleadings in this Suit be tried on oral evidence, before the Court and a Common Jury.

## EXAMINATION IN COURT.

Newnham v.  
Newnham.  
November, 1860.

The Judge ordered that the Defendant do appear before this Court at Westminster on Wednesday next the 12th instant at noon to be examined touching her knowledge of the last Will and Testament of C N deceased, bearing date the 1st day of November, 1859.

Pearse v. Bat-  
ton and Wife.  
June, 1860.

The Judge ordered that J B and E B his Wife, and T C who have respectively made Affidavits in this Cause do attend in open Court to be examined touching their knowledge of any original paper or testamentary Script of or belonging to J P the deceased in this Cause.

## EXTRACT PROBATE.

ONE PRACTITIONER TO EXTRACT PROBATE, ANOTHER PRACTITIONER HAVING FILED PAPERS AND REFUSING TO PROCEED.

In the Goods of  
H. I. Hayward,  
November, 1866.

The Judge ordered that on payment of Mr. T W P 's taxed costs, Mr. E W C the present Solicitor of M H be at liberty to extract Probate of the Will of H J H deceased, in the place of the said T W P who has filed the same with the Clerk of the Seat for that purpose, but now refuses to obtain the said Probate without prejudice to the said Mr. T W P 's application to review the taxation of his Costs.

## EXTRACT PROBATE WITHIN STATED TIME.

Edlington v.  
Edlington, Sep-  
tember, 1860.

The Judge ordered that the Defendant do extract Probate of the Will of T E late of , within one fortnight from this day, she having brought in the Will in obedience to the Subpoena.

## EXTRACT PROBATE NOTWITHSTANDING RECEIPT.

In the Goods of  
Charlotte Atkin-  
son, deceased,  
September, 1862

The Judge ordered that the Probate of the last Will and Testament of C A late of be extracted by J S of Solicitor, (notwithstanding the papers for that purpose were originally left in the Registry by the said J P and that the said J P retains possession of the receipt for the same) upon payment of the Costs of the said J P incurred in respect of his application for this Probate.

## EXTRACT ADMINISTRATION WITHIN A WEEK.

The Judge ordered that the Defendant do extract Letters of Administration of the personal estate and effects of H H, the deceased in this Cause, within a week. Eldred v. Houlton, Oct., 1863.

## INTERVENE—LEAVE TO.

Upon reading the Affidavit of F R T, sworn, and, having heard the Agents of all parties, the Judge ordered that F R T, as the Assignee of the estate and interest of J C, under the Will of H C, the deceased in this Cause, be at liberty to intervene in this Cause. Croes v. Croes and Others, February, 1863.

## INTERVENER TO SET CAUSE DOWN FOR TRIAL.

The Judge ordered that the Solicitor for the Intervener do set this Cause down for trial to-day, or in default thereof be pronounced in contempt. Laneville v. Anderson and — intervening, June, 1860.

INTERVENERS  
TO ADHERE TO EXECUTORS' DECLARATION.

The Judge ordered that the Interveners be at liberty to adhere to the Declaration of the Executors filed herein. Phillips and another v. Holmer & others November, 1866.

## ISSUE, TIME EXPIRED.

The Judge ordered that the Plaintiffs be permitted to deliver to the Defendants the Issue in this Cause, notwithstanding that the time for so doing has expired. Moore & Barber v. Holgate, April, 1866.

## ISSUE—FURTHER TIME.

The Judge ordered that the Plaintiff be at liberty to deliver the issue herein within four days. Hill v. Hill, October, 1866.

The Judge ordered that the Plaintiff be allowed fourteen days further time to deliver the Issue in this Cause. Starkey and another v. Lewis and others, March, 1868.

## INVENTORY AND ACCOUNT—FURTHER TIME.

The Judge ordered that the Defendant be allowed one month's further time, to bring into and leave in the Registry of this Court the Inventory and Account mentioned in the Citation served upon the Defendant. Lester & another v. Bond, April, 1860.

## INVENTORY TO BE FILED.

Upon reading the Affidavit of J L, the Defendant, sworn 7th September, 1866, and Affidavit of J C the Plaintiff, sworn 10th September, 1866, and on hearing the Agents of both parties, the Registrar ordered that the said J C, the Plaintiff, do, within fourteen days, file an Inventory of the personal estate and effects of J C, the deceased in this Cause. Clegg v. Leach, September, 1866.

## INVENTORY—DECLARATION INSTEAD OF.

*Lloyd v. Lloyd,* The Judge ordered that a Declaration instead of an Inventory  
*May, 1866.* of the personal estate and effects of the deceased in this Cause  
 be filed by Plaintiff in the Registry of this Court.

## JURY, ORDER FOR SPECIAL JURY DISCHARGED.

*Coulton v.* The Judge ordered that the Order for a Special Jury herein  
*Jacob,*  
*November, 1864.* be discharged, and that the Cause be heard before the Court  
 itself.

## PROPOUND PAPER WRITING.

*Dunford v.* The Judge ordered that the Defendant do propound in solemn  
*Dunford, Octo-*  
*ber, 1866.* form of law, the paper writing purporting to be and contain the  
 last Will and Testament of J R , the deceased in this  
 Cause, and file his Declaration, also Affidavit of Scripts within  
 ten days of this date.

## PROPOUND INTEREST.

*Smith and* The Judge ordered that the Defendant propound her Interest  
*others v.*  
*Tebbitt, May,* (if any) in the personal estate and effects of A T , the  
*1866.* deceased in this Cause.

## PLEAS—PEREMPTORY ORDER TO DELIVER.

*Scott and* The Judge ordered (peremptory) that the Plaintiffs do deliver  
*Harrison v.*  
*McIntyre and* their Pleas, and file a Copy thereof in the Registry, on or before  
*others,* the day of 18 .  
*December, 1863.*

## PLEAD, PEREMPTORY ORDER TO.

*Horrell v. Ruee* The Judge ordered peremptorily that the Defendant M  
*& Witte,*  
*September, 1868.* W , do plead within a week.

## PLEAD, FURTHER TIME.

*Baldwin v.* The Judge ordered that the Defendant have a fortnight's  
*Durrant,*  
*September, 1868.* further time to plead herein.

## PLEAD DESTROYED WILL, &amp;c.

*Wood by her* That the Plaintiff be allowed to plead to the Declaration in  
*Guardian v.* this Cause that G W the deceased in this Cause,  
*Wood & Walker,* destroyed the Will executed by him on the day of  
*October, 1866.* 1865, with the intention of revoking the same, and that the said  
 Will was thereby revoked, and also, as a further plea, that the  
 said deceased died intestate in Law.

## PLEAS WITHDRAWN.

*Roeback v. Roe-* The Judge ordered that the Defendant be at liberty to withdraw  
*buck, April,*  
*1866.* his Pleas.



## PARTICULARS OF PLEA.

The Judge ordered that the Defendants do, within a week from the date of this Order, deliver to the Plaintiff particulars in writing of the names, addresses, and descriptions of the person or persons mentioned or referred to in the Defendant's third plea as "others acting with the Plaintiff."

*Parmenter v. Joscelyne and others.*  
April, 1888.

The Judge ordered that the Defendant, within three days, file further particulars setting forth the names of the person alleged in the third and fourth paragraphs of Defendant's plea to have been acting in concert with T W the Plaintiff.

*Willdridge and Ryland v. Willdridge by her Guardian.*  
November, 1866.

The Judge ordered that the Plaintiffs do, within seven days, file and deliver to the Defendants particulars in writing stating the substance of the Case they intend to set up under their third plea.

*Philips and another v. Holmer and another.*  
December, 1868.

## PLEADINGS AND POSTEA AMENDED.

The Judge ordered that the date of the Will mentioned in the pleas, and also in the Replication, the Record, and the Postea respectively in this Cause as altered to , in such Pleas, Replication, Record, and Postea.

*Newnham v. Newnham.*  
July, 1860.

## PETITION—LEAVE TO FILE ANSWER.

The Judge ordered that the Defendant H B be at liberty to file his Answer to the Petition in this Cause, notwithstanding the time for doing so allowed by the Rules and Orders of this Court has expired.

*Bellew v. Bellew.*  
May, 1866.

## PETITION, PROCEEDINGS TO BE BY.

The Judge ordered that the proceedings in this Cause be conducted by an Act on Petition.

*Weaver v. Tombs.*  
December, 1866.

## PETITION INSTEAD OF DECLARATION.

The Judge ordered that the Plaintiffs be at liberty to file their Affidavit of Scripts, notwithstanding the time for so doing has expired, and ordered that the Defendant do withdraw the Declaration filed in this Cause on his behalf, and that the Plaintiffs be at liberty to proceed by Act on Petition, and that they do file such Act on Petition within a fortnight from the date of this Order.

*Grant and Grant v. Grant.*  
April, 1888.

## PETITION—PROOFS AFTER TIME.

The Judge ordered that the Plaintiffs have fourteen days further time to file Affidavits, and the Cause to stand as now set down.

*Jones and Williams v. Williams.*  
April 1866.

## PETITION—FURTHER TIME TO FILE PROOFS.

Young v. Dixon, The Judge ordered that the time for filing the Proofs by the  
October, 1866. Plaintiff be extended until the       day of       next.

## PHOTOGRAPH COPY OF WILL.

Bellew v. On reading the Affidavit of W       F       G       sworn, the  
Bellew and the Judge ordered that the Defendant be  
others, allowed to take a Photographic Copy of the Will propounded in  
February, 1866. this Cause, the Plaintiff to be furnished with a Copy of the  
Photograph of the said Will by the said Defendants.

## PAYING MONEY OUT OF COURT.

Williams & Wife The Judge ordered that the £       paid into Court  
v. Williams, herein to cover the expenses of the Plaintiffs' Witnesses, be  
March, 1866. paid out to the Defendant or his Agent.

## REPLICATION—FURTHER TIME.

Harding v The Judge ordered that the Plaintiff be at liberty to file her  
Morrow and Replication within a week.  
others, February, 1866.

## REPLICATION AMENDED.

Keeble v. The Judge ordered that the Replication in this Cause, filed by  
Keeble, the Plaintiff, be amended by taking issue on the Pleas only  
August, 1866. instead of traversing them, and that the Plaintiff have a month's  
further time to deliver the Replication and give Notice of Ap-  
plication as to mode of trial.

## REVIVE CAUSE.

Crispin v The Judge ordered that this Cause be revived in seven days  
Doglioni, by J       C       , the Executor of the Defendant, M  
November, 1866. D       , deceased, and that the said J       C       do, within  
four days, file his Affidavit of Scripts and deliver his Declaration,  
the Defendant's Agent to be at liberty to apply on Affidavit for  
extension of time and Counsel to be allowed.

Worthington v. The Judge ordered that F       W       , widow, as Execu-  
Gilbertson, trix of the Plaintiff, be at liberty to revive this Suit and carry  
and others, on the Pleadings in the Cause, in the place of H       W       ,  
November, 1866. the said Plaintiff, deceased, and that the Defendants' Agent  
have       Costs for his attendance herein.

## RECORD.

Gyll v. Gyll, The Judge ordered that the Plaintiff be at liberty to deposit the  
December, 1866. Record herein in the Registry, within eight days from this date.

## RECORD—TIME EXPIRED.

Lambell v. The Judge ordered that the Defendant be at liberty to bring  
Jones, in the Record, notwithstanding the time for so doing has  
January, 1866. expired.

## RECORD AMENDED.

The Judge ordered that the Plaintiff be at liberty to amend the Issue herein and Record, by adding subsequent Pleadings, and that the Costs of this Application and Order be Costs in the Cause.

*Hastilow v. Stobie and the Queen's Proctor Intervening,*  
April, 1866.

## REGISTRAR'S REPORT CONFIRMED.

The Judge ordered that the Report of the Registrar, dated the day of 186 , filed in this Cause, and now remaining in the Registry of this Court, be confirmed.

*Charlton v. Hindmarch,*  
August, 1860.

## SHORT NOTICE OF TRIAL.

The Judge ordered that the Defendants have a week's further time to plead and to file Affidavit of Scripts, and that Short Notice of Trial be taken, if the Cause be directed to be tried at the Spring Assizes.

*North v. North and others,*  
February, 1865.

## STAYING PROCEEDINGS.

Upon reading the Affidavit of M R , W O , and J E , respectively sworn the Judge ordered that the proceedings in this Cause be stayed until the cause of R v. D and D now depending in this Court be heard or until further Order.

*Owen v. Davies and Davies,*  
March, 1865.

## SUBPŒNA NOT OBEYED.

The Judge ordered that the Defendant do file an Affidavit setting forth his reason for not bringing in the Will of J P deceased, in obedience to the Subpœna already issued upon him, and also setting forth what has become of the said Will, if the same be not now in existence, within fourteen days from the service of this Order.

*Honsley v. Prestwick,*  
March, 1865.

## SURETIES.

Upon hearing the Attorney of the Applicant, and reading the Affidavit of C W B dated the Judge ordered that the Applicant be allowed to give three Sureties instead of two, one Surety to the extent of one moiety of the penal sum, the two others to the extent of one fourth each, and that the said Sureties do justify.

*Ex parte George Miller,*  
February, 1862.

## SENIOR PRACTITIONER TO HAVE GRANT.

Upon hearing Messrs. J & C Solicitors for E A W one of the Executrixes of the Will of W W deceased, and Messrs. H & Son, the Solicitors for R W the other Executrix named in the said Will, the Judge ordered that the Probate of the Will of the said deceased may be extracted by and delivered to the senior (as to admission) of the said Practitioners.

*William v. Wybrow deceased,*  
January, 1860.

## WITHDRAW FROM SUIT.

Bradley and  
others v.  
Sylvester and  
Sylvester,  
March, 1864.

Upon hearing the Agents on both sides, and by consent, the Judge ordered that T B be permitted to withdraw from this Suit as one of the Plaintiffs.

## WITNESS ILL.

Colee and  
another v. Coles  
May, 1867.

Upon hearing the Agents on both sides, and on reading the Affidavits of H T C and T A H sworn respectively the 6th of May, 1867, the Judge ordered that this Cause be postponed until the 1st day of July next on the ground of the illness of a material Witness.

## WITNESS IN DISTRICT.

Talbot and  
others v.  
Traherne,  
January, 1861.

The Judge ordered that the District Registrar of the Court at Landaff do take the *vivâ voce* Evidence of J P C on behalf of the Plaintiffs, and cross-examine and re-examine the said Witness.

## WITNESS ABSENT.

Barnard v.  
Burrongs and  
Wife, June,  
1862.

Upon reading the Affidavit of J H W of sworn and hearing the Agents on both sides, the Judge ordered that the trial of this Cause be postponed until Term in consequence of the absence from England of a material Witness for the Plaintiff.

## 49

## RENUNCIATION OF PROBATE AND ADMINISTRATION WITH THE WILL ANNEXED.

Renunciation  
of Probate and  
Administration  
with the Will  
annexed.

## IN HER MAJESTY'S COURT OF PROBATE.

## The Principal Registry.

In the Goods of A B, deceased.

If there are  
Codicils their  
dates should be  
also inserted.

WHEREAS A B, late of in the County of , deceased, died on the day of 18, at . And Whereas he made and duly executed his last Will and Testament (or Will and Testament with a Codicil thereto) bearing date the day of 18, and thereof appointed C D, Executor and Residuary Legatee in trust (or as the case may be).

Now I, the said C D, do hereby declare that I have not intermeddled in the personal estate and effects of the said deceased, and will not hereafter intermeddle therein, with intent to defraud Creditors, and I do hereby expressly renounce all my right and title to the Probate and execution of the said

Will (and Codicils, *if any*) and to the Letters of Administration with the said Will (and Codicils, *if any*) annexed, of the personal estate and effects of the said deceased (*add in cases where a Proctor, Solicitor, or Attorney is to appear for the person renouncing*); and I hereby appoint E F, of my Proctor, Solicitor, or Attorney, to file, or cause to be filed, this Renunciation for me, in the said Principal Registry of Her Majesty's Court of Probate.

IN Witness whereof, I have hereto set my hand and seal this day of 18 .

Signed, sealed, and delivered }  
by the said C D , C D L. S.  
in the presence of H G }

(One disinterested Witness sufficient).

RENUNCIATION OF ADMINISTRATION.

50

IN HER MAJESTY'S COURT OF PROBATE.

Renunciation of Administration.

The Principal Registry.

IN the Goods of A B, deceased.  
WHEREAS A B, late of in the  
County of , deceased, died on the  
day of 18 , at intestate, a widower.  
And Whereas, I C D, am his natural, lawful, and  
only child (or, as the case may be),

This is to be varied, so as to show the kindred or interest of the person renouncing.

Now I, the said C D, do hereby expressly renounce all my right and title to the Letters of Administration of the personal estate and effects of the said deceased (*add in cases where a Proctor, Solicitor, or Attorney, is to appear for the person renouncing*) and I hereby appoint E F, of my Proctor, Solicitor, or Attorney to file or cause to be filed this Renunciation for me in the Principal Registry of Her Majesty's Court of Probate. In Witness whereof I have hereto set my hand and seal this day of 18 .

Signed, sealed, and delivered }  
by the said C D , C D L. S.  
in the presence of G H }

(One disinterested Witness sufficient).

## 51

Renunciation  
and Consent.

## RENUNCIATION AND CONSENT.

IN HER MAJESTY'S COURT OF PROBATE.

The Principal Registry.

In the Goods of A B, deceased.

Whereas A B, late of , deceased,  
died on the day of 18, at ,  
intestate, a Bachelor, leaving me, the undersigned C  
D, of , his natural and lawful father and  
next of kin.

Now I, the said C D do hereby expressly renounce  
all my right and title in and to the Letters of Administration of  
the personal estate and effects of the said deceased, and I do also  
hereby consent that Letters of Administration of the said personal  
estate and effects may be granted to E D the natural  
and lawful brother of the said deceased, and I hereby appoint  
G H, of , my Proctor, (Solicitor or Attorney),  
to file or cause to be filed this Renunciation and Consent for me  
in the said Principal Registry of Her Majesty's Court of Probate.  
In Witness whereof, I have hereunto set my hand and seal this  
day of 18.

Signed, sealed, and delivered }

by the said C D ,

in the presence of

Y Z ,

Witness. }

C D , L. S.

## 52

Renunciation  
of Guardianship.

## RENUNCIATION OF GUARDIANSHIP.

IN HER MAJESTY'S COURT OF PROBATE.

The Principal Registry.

In the Goods of A B, deceased.

Whereas A B, late of , deceased,  
died on the day of 18, at , having  
made and duly executed his last Will and Testament,  
bearing date the day of 18, and therein  
appointed C D sole Executor and Residuary  
Legatee. And whereas the said C D, is  
now in his minority, to wit, of the age of  
years and upwards, but under the age of twenty-one  
years. And whereas I, the undersigned E F  
am the natural and lawful and only next of kin of the  
said C D.

Now I, the said E F, do hereby expressly renounce  
all my right and title in and to the Curation or Guardianship of

the said Minor, and I appoint J K , of  
my Proctor, Solicitor, or Attorney, to file or cause to be filed this  
Renunciation for me in the said Principal Registry of Her  
Majesty's Court of Probate.

In Witness whereof, I have hereto set my hand and seal this  
day of , 18 .

Signed, sealed, and delivered }  
by the said E F  
in the presence of  
Y Z ,  
Witness. }

E F L. S.

## REQUISITION FOR EXAMINATION OF WITNESSES.

53

### IN HER MAJESTY'S COURT OF PROBATE.

VICTORIA, by the Grace of God of the United Kingdom of Requisition for  
Examination of  
Witnesses.  
Great Britain and Ireland, Queen, Defender of the Faith,

To , Judge of the Court of , New  
York, or, in his absence or declining to act, to , Greeting,  
Whereas there is now depending in our Court of Probate a  
certain Cause of proving in solemn form of Law by sufficient  
Witnesses the last Will and Testament of , late of the City  
of in the County of in the State of , deceased,  
purporting to bear date the day of , 186 , wherein  
is Plaintiff and is Defendant. And whereas  
the Right Honorable Sir , Knight, the Judge of our  
said Court of Probate, by his order made in the said Cause on  
the day of 186 , hath ordered that a Requisition  
do issue, under the Seal of our said Court, requesting you to  
examine the Witnesses to be produced by the Defendant in  
support of the allegations in the Pleadings in the said Cause.  
Now know ye that we do, by virtue of this Requisition to you  
directed, authorize and request you on receipt hereof, at a certain  
time and place to be by you appointed for that purpose, with  
power of adjournment to such other time and place as to you shall  
seem convenient, to cause the said Witnesses to come before you,  
and to administer to the said Witnesses respectively an oath  
truly to answer such questions as shall be put to them touching  
the matters set forth in the Pleadings in the said Cause contained  
in the Record, an official copy whereof is hereunto annexed, and  
to reduce the said examination, or cause the same to be reduced,  
into writing. And the said examination being taken, reduced  
into writing, and subscribed by you, We do request you, or one  
of you, forthwith to transmit the same, closely sealed up, to the

Principal Registry of our said Court in Doctors' Commons, in the City of London, together with this Requisition, on or before the      day of      next. And we do hereby give you full power and authority to do all such acts, matters, and things as may be necessary and lawful for the due execution thereof.

See Oaths page.  
215.

Dated at London the      day of      186      , and in the  
year of our Reign.

X      Y  
Registrar. L. S.

Requisition.

Issued by L      M  
London, Solicitor  
for the { Plaintiff  
          { or  
          { Defendant.

54

## RETURN OF EXAMINATION BY DISTRICT REGISTRAR, &c.

IN HER MAJESTY'S COURT OF PROBATE.

A B v. C D

Return of Ex-  
amination be-  
fore District  
Registrar or  
other person.

The Examination of      a Witness pro-  
duced, sworn and examined on the part of the above-named  
Plaintiff, or      } taken before me      the District Registrar  
Defendant      }  
of the said Court, for the town and county of  
this      day of      186      , Pursuant to the  
Order of the Right Honourable Sir      Dated  
the      day of      18      , herewith annexed.  
(Here follows the Deposition).

I, the aforesaid      do hereby, in pursuance  
of the aforesaid Order certify that this and the foregoing  
sheets of Paper do contain the Examination, Cross-Examination,  
and Re-Examination of the above-named Witness. Given under  
my hand and the seal of the District Registry of the said Court,  
this      day of      18      .

L M, District Registrar.

Seal.



## RETURN OF EXAMINATION BY SPECIAL EXAMINER.

55

IN HER MAJESTY'S COURT OF PROBATE.

K v. S and others.

Deposition of \_\_\_\_\_ Widow, a Witness sworn and  
 examined the \_\_\_\_\_ day of \_\_\_\_\_ 186 , in the  
 above Cause at \_\_\_\_\_, before me, W D \_\_\_\_\_, Return of  
Examination  
by Special  
Examiner.  
 Special Examiner, appointed by an Order of the Court, dated  
 the \_\_\_\_\_ day of \_\_\_\_\_ 186 .

(Here follows the Deposition).

I, W D \_\_\_\_\_, of New Square, Lincoln's Inn, in the  
 County of Middlesex, Barrister-at-Law, certify that the evidence  
 contained in this and the preceding \_\_\_\_\_ pages was taken by me  
 in the presence of the parties attending on the \_\_\_\_\_ day  
 of \_\_\_\_\_ 186 .

W D  
 [Seal]

SUBPÆNA TO A WITNESS TO BE EXAMINED TOUCH-  
 ING A TESTAMENTARY PAPER OF WHICH HE  
 IS SUPPOSED TO HAVE KNOWLEDGE.

56

VICTORIA, by the Grace of God of the United Kingdom of  
 Great Britain and Ireland Queen, Defender of the Faith.

To \_\_\_\_\_ of \_\_\_\_\_, Greeting. We command  
 you, that, all other things set aside, and ceasing every excuse,  
 you do appear before A B \_\_\_\_\_, the Judge of our Court of  
 Probate, at our Court of Probate, at \_\_\_\_\_ on the  
 day of \_\_\_\_\_ 18 , by \_\_\_\_\_ of the clock  
 in the forenoon of the same day, and so from day to day until  
 you be dismissed by our said Judge, to testify the truth according  
 to your knowledge [or to answer to certain interrogatories to be  
 administered to you], touching a certain Paper Writing or Script,  
 being or purporting to be Testamentary, to wit, [*here describe the  
 Script, and give its date as accurately as possible*], of which said  
 Paper Writing or Script reasonable grounds have been furnished  
 to our said Judge for believing that you have knowledge. And  
 this you shall in nowise omit, under the penalty of £100. Wit-  
 ness [*insert the name of the Judge*], at the Court of Probate, the  
 day of \_\_\_\_\_ 18 , in the  
 year of Our reign.

Subpæna to  
 Witness.

E F, Registrar.

[*Name of the Practitioner and Address.*]

57

WRIT OF FIERI FACIAS AGAINST PLAINTIFF'S  
GOODS FOR PAYMENT OF COSTS, &c.

IN HER MAJESTY'S COURT OF PROBATE.

Writ of Fieri  
Facias.

VICTORIA, by the Grace of God of the United Kingdom of  
Great Britain and Ireland, Queen, Defender of the Faith,

To the Sheriff of our County of \_\_\_\_\_ Greeting, We  
command you that of the Goods and Chattels of J \_\_\_\_\_ S \_\_\_\_\_,  
in your Bailwick, you cause to be made the sum of £ \_\_\_\_\_,  
for certain Costs in which the said J \_\_\_\_\_ S \_\_\_\_\_ was lately before  
our said Court of Probate, in a certain Cause there depending,  
wherein J \_\_\_\_\_ S \_\_\_\_\_ was Plaintiff and S \_\_\_\_\_ H \_\_\_\_\_ was  
Defendant condemned, and which Costs have been taxed and  
allowed by one of the Registrars of our said Court, at the said  
sum of £ \_\_\_\_\_ and which said sum of £ \_\_\_\_\_ was  
by an Order of the Right Honourable Sir \_\_\_\_\_ Knight,  
the Judge of our said Court, bearing date the \_\_\_\_\_ day  
of \_\_\_\_\_ 1867, ordered to be paid by the said J \_\_\_\_\_ S \_\_\_\_\_  
to the said S \_\_\_\_\_ S \_\_\_\_\_, or to Messrs. M \_\_\_\_\_ and G \_\_\_\_\_, her  
Solicitors, or to one of them, within one week, together with the  
sum of £ \_\_\_\_\_, the Costs of the said Order. And the  
further sum of £ \_\_\_\_\_, being the Costs ordered to be  
paid by the said J \_\_\_\_\_ S \_\_\_\_\_ by another Order of the said  
Judge, dated the \_\_\_\_\_ day of \_\_\_\_\_ 1868, and that  
of the Goods and Chattels of the said J \_\_\_\_\_ S \_\_\_\_\_ in your Bail-  
wick you further cause to be made interest upon the said sum of  
£ \_\_\_\_\_, at the rate of £4 per centum per annum, from  
the \_\_\_\_\_ day of \_\_\_\_\_ last. And that you have  
that money and interest before our said Court immediately after  
the execution hereof, to be paid to the said S \_\_\_\_\_ S \_\_\_\_\_, or to  
the said Messrs. M \_\_\_\_\_ and G \_\_\_\_\_, or to one of them, in pur-  
suance of the said Order. And that you do all such things as  
by the Statute passed in the second year of our reign you are  
authorized and required to do in this behalf and in what manner  
you shall have executed this our Writ make appear to our said  
Court immediately after the execution thereof, and have there  
then this Writ.

Witness the Right Honourable Sir \_\_\_\_\_  
at Westminster, the \_\_\_\_\_ day of \_\_\_\_\_ 186 \_\_\_\_\_,  
in the \_\_\_\_\_ year of our Reign.

## ENDORSEMENT.

*By the Court.*

LEVY £ \_\_\_\_\_ and interest from the \_\_\_\_\_ day  
of \_\_\_\_\_ 1868, together with £ \_\_\_\_\_ for this Writ  
and Warrant thereon, besides Officers' Fees, Sheriffs, and all  
other legal and incidental expenses.

This Writ is issued by M                      and G                      , of  
in the County of Middlesex. The within named J                      S                      ,  
is a (Blacksmith) and resides at                      in your  
Bailwick.

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PRÆCIPE FOR FIERI FACIAS.

IN HER MAJESTY'S COURT OF PROBATE.

S v. S

Præcipe for Writ of Fieri Facias against Plaintiff's Goods on                      Præcipe.  
the part of the Defendant for the sum of £                      .  
(Signed)                      M & G,

\_\_\_\_\_ Street.

23rd February, 1868.

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WRIT OF SEQUESTRATION AGAINST REAL AND  
PERSONAL ESTATE.

58

VICTORIA, by the Grace of God, of the United Kingdom of Great                      Writ of  
Britain and Ireland, Queen, Defender of the Faith,                      Sequestration.

To                      of

Greeting, Whereas by a Decree or Order dated the                      day of  
18                      , made in and by our Court of Probate in a Cause wherein  
                    was and is Plaintiff, and                      was and is  
Defendant, it was decreed and ordered that a Sequestration  
should issue against the real and personal estate of the said  
                    in order to enforce the payment of the sum of £                       
being the amount of the costs of the said Defendant in the said  
Cause, as taxed and certified by one of the Registrars of our said  
Court. Know ye therefore that we, in confidence of your  
prudence and fidelity, have given, and by these presents do give  
unto you full power and authority to enter upon all the  
messuages, lands, tenements, and real estate whatsoever of the  
said                      and to take, collect, receive, and sequester into  
your hands not only all the rents and profits of h                      said  
messuages, lands, tenements, and real estate, but also all h                       
money, securities for money, goods, chattels, and personal estate.  
And therefore we command you that you do, at certain proper  
and convenient days and hours, go to and enter upon all the  
messuages, lands, tenements, and real estate of the said                       
and that you do collect, take, and get into your hands not only  
the rents and profits of h                      said real estate, but also h                      moneys,  
securities for money, goods, chattels, and personal estate, and

detain and keep the same under sequestration in your hands until the said                    shall pay the sum of                    being the amount of the aforesaid costs, or clear h                    contempt, or our said Court make other order to the contrary.

Witness the Right Honourable Sir                   , Knight, at Westminster, the                    day of                    in the                    year of our reign. This Writ was taken out by  
(Præcipe, see page 235).

## 59

## WRIT OF SEQUESTRATION AGAINST REAL ESTATE.

## IN HER MAJESTY'S COURT OF PROBATE.

Sequestration  
against  
real Estate.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, To A                    B                   , of                   , in the County of                    Sheriff's Officer; C                    D                   , of                   , Assistant to the said A                    B                   ; E                    F                   , of                   , Assistant to the said A                    B                   .

Greeting, Whereas by a Decree or Order dated the day of                    18                   , made in and by our Court of Probate in a Cause wherein G                    H                    was and is Plaintiff, and I                    J                    was and is Defendant, it was decreed and ordered that a Sequestration should issue against the real Estate of the said G                    H                   , in order to enforce the payment of the sum of £                    being the amount of the Costs of the said Defendant in the said Cause, as taxed and certified by one of the Registrars of our said Court. Know ye therefore that we in confidence of your prudence and fidelity have given, and by these presents do give, unto you any three or two of you full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said G                    H                   , and to take, collect, receive, and sequester into your hands all the rents and profits of his said messuages, lands, tenements, and real estate. And therefore we command you, any three or two of you that you do at certain proper and convenient days and hours go to and enter upon all the messuages, lands, tenements, and real estate of the said G                    H                   , and that you do collect, take, and get into your hands the rents and profits of his said real estate, to detain and keep the same under sequestration in your hands until the said G                    H                    shall pay the sum of £                   , being the amount of the aforesaid Costs, clear his contempt, and our said Court make other Order to the contrary.

Witness the Right Honourable Sir                    Knight, at Westminster, the                    day of                   .  
This Writ was issued by  
(Præcipe, see page 235).

## WRIT OF SEQUESTRATION AND ASSISTANCE.

60

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, To the Sheriff of our County of \_\_\_\_\_, as well present as for the future, Greeting, Whereas in pursuance of an Order made in a certain Cause depending in our Court of Probate between T B, Plaintiff, and H B, C P, and R B, Defendants, a Sequestration bearing date the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, issued under seal of our said Court directed to C T A, of \_\_\_\_\_, Sheriff's Officer, T D, of \_\_\_\_\_, Assistant to the said C T A, J W B, of \_\_\_\_\_, Auctioneer's Assistant, and J C, of \_\_\_\_\_, Auctioneer's Assistant, whereby full power and authority was given unto them, any three or two of them, to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said T B, and to take, collect, receive, and sequester into their hands all the rents and profits of his said messuages, lands, tenements, and real estate, and they were commanded to go to and enter upon the said messuages, lands, tenements, and real estate, to collect, take, and get into their hands the rents and profits of the said real estate and detain and keep the same under Sequestration in their hands until the said T B should pay the sum of \_\_\_\_\_, being the amount of the Costs of the said Defendants, and clear his contempt, or our said Court make other order to the contrary. And Whereas, on reading the Affidavit to the said C T A, sworn on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, it appeared that possession of a certain freehold cottage or tenement and premises, the property of the said T B, and in his occupation, situate in \_\_\_\_\_ had been legally demanded by the said C T A and J W B, two of the Sequestrators aforesaid, but that the said T B had refused to comply with the said demand, and still detained and kept possession of the said freehold cottage or tenement and premises, the Right Honourable the Judge of our said Court did, by his Decree made in the said Cause, on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, order that a further Sequestration in the nature of a Writ of Assistance should issue, under seal of our said Court, directed to the Sheriff of our County of \_\_\_\_\_, to enter upon the said freehold cottage or tenement and premises of the said T B, situate in \_\_\_\_\_ and to put the said C T A, T D, J W B, and J C, or any three or two of them, into possession thereof. Know ye, therefore, that we being willing and desirous that justice should be done to the said

Writ of Sequestration and Assistance.

H B , C P and R B , in this behalf do give unto you full power and authority to place and put the said C T A , T D , W B , and J C , or any three or two of them, without delay, into the full, peaceable, and quiet possession of the said freehold cottage or tenement and premises, with their appurtenances, and from time to time, as often as there shall or may be occasion to maintain and keep them and their assigns in such peaceable and quiet possession according to the intent and true meaning of the said original Sequestration, and of the orders of our said Court, and therefore we do hereby command and enjoin you that, immediately after your receipt of this Writ, you do go and repair to and enter into and upon the said freehold cottage or tenement and premises, and that you do remove, eject, and expel the said T B , his tenants, servants, and accomplices, each and every of them, out of and from the said cottage and premises and every part and parcel thereof, and that you do place and put the said C T A , T D , J W B , and J C , or any three or two of them into the full, peaceable and quiet possession thereof, and defend and keep them in such peaceable and quiet possession when and as often as any interruption may or shall, from time to time, be given or offered to them or any of them, in order that they or any three or two of them may take, collect, receive, and sequester into their hands all the rents and profits of the said freehold cottage or tenement and premises, and detain and keep the same under sequestration in their hands until the said T B shall pay the sum of £ , being the amount of the aforesaid Costs, or clear his contempt, according to the true intent and meaning of the original Sequestration and of the Orders of our said Court, and herein you are not in anywise to fail.

Witness the Right Honourable Sir  
Knight, the Judge of our said Court, at Westminster, the  
day of in the year of

Our reign.

Writ of Sequestration }  
and Assistance, }

B & Son,  
Red Lion Square,  
Solicitors.

Præcipe, see page 235).

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